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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 69, No. 233
Monday, December 6, 2004

Presidential Documents

Title 3—

The President

Proclamation 7850 of December 1, 2004

World AIDS Day, 2004

By the President of the United States of America

A Proclamation

HIV/AIDS is the greatest health crisis of our time. Its defeat requires the cooperation of the entire global community. On World AIDS Day, people around the world unite to demonstrate our commitment to fighting HIV/AIDS and to offer prayers and support for those living with HIV/AIDS and for their families and caregivers.

America and many nations have great opportunities to improve health, expand prosperity, and extend freedom in our time. My Administration has made turning the tide against HIV/AIDS a priority. In my 2003 State of the Union Address, I was proud to announce the Emergency Plan for AIDS Relief. This plan commits $15 billion over 5 years to fight the HIV/AIDS pandemic in over 100 countries throughout the world, focusing on 15 of the hardest-hit countries in Africa, the Caribbean, and Asia. These funds are already at work and will help prevent 7 million new infections, treat 2 million infected individuals, and care for 10 million individuals, including orphans and vulnerable children infected or affected by this disease.

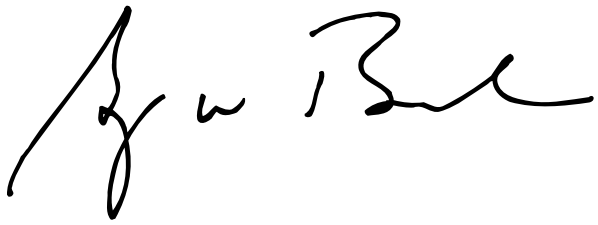
This year, we also recognize the challenges HIV/AIDS poses to women. Through the Emergency Plan, the United States supports drug therapy and counseling to prevent mother-to-child transmission of HIV/AIDS. In addition, we are working to prevent girls from becoming infected through sexual coercion or exploitation and to increase support and services to help reduce the burden on women who are called upon to care for a sick loved one.

In order to defeat this pandemic, we also must discover new treatments and cures. America joined with other countries at the G-8 Summit in June to announce the Global HIV Vaccine Enterprise, a major commitment from the world's leading scientists to find ways to combat this devastating disease. My Administration also supports efforts to encourage testing because in the United States alone, one-quarter of those infected with HIV each year do not know that they are infected. And, because abstinence is the only sure way to avoid sexually transmitted diseases, my Administration has more than tripled funding for abstinence-only programs since taking office.

Our country and other nations around the world are working to bring new hope to those suffering with HIV/AIDS and contribute to a healthier future for people around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1, 2004, as World AIDS Day. I urge the Governors of the States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and the American people to join me in remembering those who have lost their lives to this disease and to comfort and support those living with and affected by HIV/AIDS.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7851 of December 2, 2004

National Drunk and Drugged Driving Prevention Month, 2004

By the President of the United States of America

A Proclamation

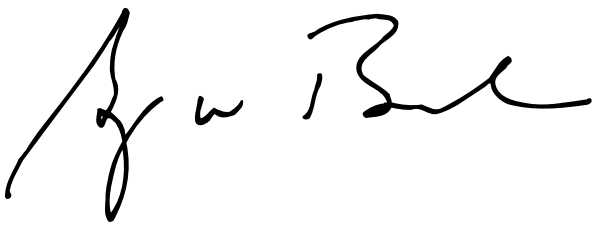
As a Nation, we have made great strides in reducing the deadly cost of impaired driving, but driving under the influence of alcohol or drugs still shatters too many lives and robs too many people of their potential. During National Drunk and Drugged Driving Prevention Month, we continue our work to end impaired driving and urge all Americans to be responsible and safe drivers this holiday season and throughout the year.

My Administration is committed to saving lives and preventing injuries resulting from alcohol- and drug-impaired driving. The NHTSA sponsors public education programs such as the ''You Drink & Drive. You Lose.'' campaign to raise awareness about the dangers of drunk and drugged driving, and works with State and local law enforcement agencies as they conduct sobriety checkpoints and saturation patrols. In addition, the National Youth Anti-Drug Media Campaign has invested millions of dollars to educate Americans about the threat posed by illegal drugs and drugged driving. We are also increasing resources for State enforcement and education programs. My Administration awarded $80.6 million in grants this year to States that have lowered the legal threshold for impaired driving to .08 blood alcohol concentration (BAC). As of this year, all 50 States, the District of Columbia, and the Commonwealth of Puerto Rico have adopted this legal definition of impaired driving.

Individuals across our country can help prevent drunk and drugged driving by encouraging responsible actions, identifying sober designated drivers, and educating young people about safe, substance-free driving behavior. Working together, all Americans can make our roads safer and save lives by preventing drunk and drugged driving.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 2004 as National Drunk and Drugged Driving Prevention Month.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 317, 352, 359, 451, 530, 531, 534, and 575

RIN 3206–AK34

Senior Executive Service Pay and Performance Awards; Aggregate Limitation on Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to establish a performance-based pay system for the Senior Executive Service (SES) and a higher aggregate limitation on pay for SES members and employees in senior-level and scientific or professional positions. These regulations prescribe the criteria for the administration of rates of basic pay and performance awards under the SES performance-based pay system and the rules for applying the aggregate limitation on pay.

DATES: The regulations are effective on December 6, 2004.

FOR FURTHER INFORMATION CONTACT: Jo Ann Perrini by telephone at (202) 606–2858; by FAX at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing final regulations to establish a performance-based pay system for the Senior Executive Service (SES) and a higher aggregate limitation on pay for SES members and employees in senior-level (SL) and scientific or professional (ST) positions. In these regulations, we interchangeably use the terms ''SES members'' and ''senior executives'' to mean members of the Senior Executive Service. In addition, we refer to SL/ST employees as ''senior professionals.''

The new SES pay system assures a clear and direct linkage between performance and pay, a cornerstone of the President's Management Agenda. For those agencies with senior executive performance appraisal systems certified under 5 CFR part 430, subpart D, the new SES pay band provides a broad range of rates (a minimum rate of $104,927 and a maximum rate of $158,100 in 2004) within which agencies may set pay based on the senior executive's individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance management system. In addition, agencies with applicable certified performance appraisal systems may apply a higher aggregate limitation on pay up to the Vice President's salary ($203,000 in 2004) for their senior executives and senior professionals.

On January 13, 2004, OPM issued interim regulations to establish the new SES performance-based pay system (69 FR 2048). The interim regulations are available at *http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=764393445783+15+0+0&WAISaction=retrieve.* In those interim regulations, OPM established the structure of the SES rate range, rules for conversion to the new pay system, and the criteria for providing pay adjustments to SES members on or after the first pay period beginning on or after January 1, 2004 (January 11, 2004). The 60-day comment period ended on March 15, 2004. We received comments from two agencies, one individual, and an executive association.

On July 29, 2004, OPM issued proposed regulations to prescribe rules for establishing and adjusting SES rates of basic pay, paying performance awards to senior executives, and applying the aggregate limitation on pay if an agency receives certification of an applicable performance appraisal system under 5 U.S.C. 5307(d) (69 FR 45536). The proposed regulations are available at *http://frwebgate2.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=764180215293+2+0+0&WAISaction=retrieve.* The 30-day comment period ended on August 30, 2004. We received comments from a Member of Congress, six Federal agencies, two individuals, and an executive association.

In this final rule document, OPM will address the comments received on both the interim regulations on conversion to the SES pay system and the proposed regulations on the administration of SES pay and performance awards. We received no comments on the proposed changes in the regulations on the aggregate limitation on pay (5 CFR part 531, subpart B).

Minimum SES Rate of Basic Pay

Under § 534.406(a) of the interim regulations (and § 534.403(a) of the proposed regulations), OPM established the minimum rate of basic pay in the SES rate range at an amount equal to the minimum rate of basic pay under 5 U.S.C. 5376 for senior-level positions (excluding locality-based comparability payments under 5 U.S.C. 5304). One commenter recommended that OPM establish a higher minimum rate of basic pay in the SES rate range, since the current minimum rate ($104,927) is less than the rate for GS–15, step 3 (including locality pay), in the Washington, DC, area. The commenter is concerned that the current minimum SES rate of basic pay does not take into account that SES members are no longer entitled to locality pay. In addition, the commenter suggested that setting the minimum rate at this low rate does not give an agency the latitude it needs to set pay upon appointment to the SES at a level that is commensurate with the duties and responsibilities of an SES position. Under 5 U.S.C. 5382, the minimum rate of basic pay for the SES rate range may not be less than the minimum rate of basic pay (excluding locality pay) payable under 5 U.S.C. 5376. In establishing the new SES open-range pay band, OPM determined that it would be most beneficial to agencies and employees to ensure the widest rate range possible under the new performance-based pay system. Agencies may choose to consider the applicable locality payment when setting the rate of basic pay of a senior executive upon initial appointment to the SES.

Prohibition on Reducing an SES Member's Rate of Basic Pay for 1 Year

Consistent with section 1125(c)(2) of the National Defense Authorization Act for Fiscal year 2004 (Public Law 108–136, November 24, 2003), § 534.406(b)(2) of the interim

regulations (and § 534.406(b) of the proposed regulations) prohibits agencies from reducing a senior executive's rate of basic pay, including any applicable locality payment, below the rate that was in effect on November 24, 2003, for 12 months following the effective date of the new SES pay system (January 11, 2004). A commenter believes OPM's regulations establish a more restrictive limitation on reductions in SES rates of pay than does the controlling statute. The commenter believes section 1125(c)(2) prohibited only reductions in the discrete SES pay levels (ES–1, ES–2, *etc.*) and applicable locality payments, but did not prohibit reductions in pay based on performance or conduct. We disagree. Section 1125(c)(2) specifically prohibits any reduction in pay resulting from the amendments made by section 1125(a), which establishes the minimum and maximum rates of the SES rate range and requires each senior executive to be paid at one of the rates within that rate range. Section 1125(c)(2) provides that the rates of pay for senior executives under the new performance-based SES pay system, which became effective on January 11, 2004, may not be reduced for 1 year after that date.

Conversion to New SES Pay System

Section 534.406(b)(3) of the interim regulations (and § 534.406(c) of the proposed regulations) states that only certain SES members in positions that have geographic mobility requirements and who are assigned outside the contiguous 48 States and the District of Columbia to a position overseas or in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, or other U.S. territories and possessions as of the first day of the first pay period beginning on or after January 1, 2004, will be converted to a new rate of basic pay that equals their current rate of basic pay, plus the amount of locality pay authorized for the applicable locality pay area upon reassignment to a position in the 48 contiguous States or the District of Columbia. Any pay increase resulting from conversion to the new SES pay system for these SES members is not considered a pay adjustment under § 534.404(c) for the purpose of limiting an agency's flexibility to adjust pay more than once during a 12-month period.

Two commenters requested that OPM revise § 534.406(b)(3) to remove the limitation that only certain SES members subject to a geographic mobility requirement may receive this entitlement to a pay increase upon reassignment to the 48 contiguous States or the District of Columbia. The commenters believe the limitation unfairly penalizes employees who accepted an assignment outside the 48 contiguous States without a geographic mobility requirement, since all SES members, by definition, must be mobile and accept reassignment upon management request. We agree and have revised § 534.406(b)(3) (now § 534.406(c)), accordingly. Since this rule applies to any reassignment to the 48 contiguous States effective on the first day of the first pay period beginning on or after January 1, 2004 (January 11, 2004), agencies may need to correct the rate of basic pay for those SES members who were reassigned to the 48 contiguous States after January 11, 2004, and before the effective date of these final SES pay regulations.

We also have revised § 534.406(c) to clarify that the conversion rule applies only for the senior executive's initial reassignment to the 48 contiguous States, not for each subsequent reassignment to the 48 States, and we have deleted an unnecessary reference to § 534.403(a)(2).

Adjusting SES Rates of Pay

Several commenters recommended that OPM revise the regulations to ensure that those senior executives performing at the fully successful or higher level receive a periodic increase in pay to account for their good performance and to protect their salaries against inflation. The commenters noted that the removal of locality pay for senior executives eliminated any ability to account for market forces or comparability as part of the pay-setting process for senior executives. The commenters fully support the notion that the highest performers should receive the highest salaries, but believe the new SES pay system must include consideration of economic realities to allow employees who are successfully meeting their performance expectations to maintain their relative position in the rate range.

To address these concerns, we have added a new § 534.404(b)(4) to allow an agency to increase the rate of basic pay of a senior executive who meets or exceeds his or her performance expectations on the effective date of an increase in the minimum or maximum rate of basic pay of the SES rate range by an amount that does not exceed the amount necessary to maintain the senior executive's relative position in the SES rate range, with the following two exceptions. First, a pay increase may not be provided to a senior executive whose rate of basic pay is at or below the rate for level III of the Executive Schedule if such an increase would cause the senior executive's rate of basic pay to exceed the rate for level III of the Executive Schedule unless the senior executive has received an annual summary rating of outstanding for the most recently completed appraisal period and the agency head or designee approves the increase. Second, a pay increase may not be provided to a senior executive whose rate of basic pay is above the rate for level III of the Executive Schedule unless the senior executive has received an annual summary rating of outstanding for the most recently completed appraisal period and the agency head or designee approves the increase. However, in the case of a senior executive whose rate of basic pay is above the rate for level III of the Executive Schedule and who has been rated below outstanding, but above fully successful, for the most recently completed appraisal period, the agency head or designee may approve such a pay increase in limited circumstances, such as for an exceptionally meritorious accomplishment. A pay increase made to allow a senior executive to maintain his or her relative position in the rate range is not an entitlement and is not considered a pay adjustment for the purpose of applying the 12-month rule in § 534.404(c).

A commenter recommended that OPM allow agencies to delegate throughout the organization (*e.g.*, to bureau heads) the authority to approve rates of basic pay higher than the rate for level III of the Executive Schedule and to make exceptions to the 12-month rule. We disagree. We believe it is necessary to ensure that the agency official who is held responsible for the assessment of an agency's performance and oversight of an agency's senior executive appraisal process, as prescribed in 5 CFR 430.404(a)(5) and (6), should also be held responsible for ensuring that pay determinations reflect and recognize both individual and organizational performance.

Additional Increases in Rates for the Executive Schedule

In the Preamble to the proposed regulations, OPM solicited the views of commenters on a proposal to allow an additional pay increase during a 12-month period to address situations where the rates of pay for levels II and III of the Executive Schedule are increased after an agency has already granted pay increases to its senior executives following the SES performance appraisal period. Agencies would be permitted, at their discretion, to grant an additional pay increase to a

senior executive whose rate of basic pay is equivalent to the maximum rate for the applicable SES rate range (*i.e.*, level II or level III of the Executive Schedule) when the applicable maximum rate is increased, and the pay increase would not be considered a pay adjustment for the purpose of applying the 12-month rule. Seven commenters fully supported this proposal. One commenter objected to this proposal because it did not promote pay differentiation based on performance. We disagree with this objection since the proposed additional pay increase is directly associated with the initial pay increase, which was based on performance. We have added a new § 534.404(f)(2) to allow an agency to provide an additional pay increase to a senior executive whose rate of basic pay is equal to the rate for level II or III when the applicable maximum rate is increased and becomes effective after an agency has already granted a pay increase to the senior executive.

Federal agencies recommended that OPM clarify and simplify the rules for increasing a senior executive's rate of basic pay as a result of increases in the rates of pay for the Executive Schedule. If an agency believes an additional pay increase is warranted for a senior executive as a result of an increase in the rates of pay for the Executive Schedule under § 534.404(f)(1) (when there is an additional increase in the rates for the Executive Schedule in a calendar year and that increase becomes effective on the same date as prescribed in 5 U.S.C. 5318) and § 534.404(f)(2) (when there is an increase in the rates of pay for the Executive Schedule after an agency has already granted pay increases to its senior executives following the performance appraisal period), the agency may grant such a pay increase without regard to whether the employee had received a pay adjustment during the previous 12-month period. We have revised § 534.404(c)(3) to state that any determination to provide an additional pay increase under § 534.404(f) is not considered a pay adjustment for the purpose of applying the 12-month rule in § 534.404(c).

Setting Pay Upon Initial Appointment to the SES

One commenter recommended that agencies be required to provide senior executives with a pay increase upon initial appointment to the SES. The commenter believes that entry into the SES is a distinct honor and should guarantee a pay raise for those joining this elite group of civil servants. We believe OPM's regulations provide agencies with broad discretionary authority to set pay upon initial appointment to the SES. Under § 534.404(a), an agency may set the rate of basic pay of a newly appointed SES member at any rate within the SES rate range, subject to the limitation on setting pay above the rate for level III of the Executive Schedule. The agency must determine the appropriate rate of pay based on the nature and quality of the individual's experience, qualifications, and accomplishments as they relate to the requirements of the SES position, as well as the individual's current responsibilities.

Setting Pay Upon a Break in Service

Under § 534.404(i)(1) of the proposed regulations, if a former SES member has had a break in service of 30 days or less, the employing agency must set his or her rate of basic pay upon reappointment to the SES at a rate at least equal to the employee's former SES rate of basic pay. Two commenters opposed this requirement because it unduly limits an agency's discretion to set pay based on the scope and level of responsibility of the new position. We agree. We have revised § 534.404(i)(1)to state that if there has been a break in SES service of 30 days or less, the senior executive's rate of basic pay may be set at any rate within the SES rate range (without regard to whether the employee received a pay adjustment during the previous 12-month period), but not higher than the employee's former SES rate of basic pay. Where there has been a break in service of 30 days or less, the agency head or designee who performs the functions described in 5 CFR 430.404(a)(5) and (6) (including the Inspector General, where applicable) may approve a higher rate than the senior executive's former rate of basic pay, if warranted.

Under § 534.404(i)(2) of the proposed regulations, we address the reinstatement of an individual who was serving under a Presidential appointment requiring Senate confirmation. In the final regulations, we are clarifying this paragraph to state that if the individual elected to remain subject to the SES pay provisions while serving under a Presidential appointment, his or her SES rate may be adjusted upon reinstatement to the SES, whether in the agency where the individual held the Presidential appointment or in another agency, if at least 12 months have elapsed since the employee's last SES pay adjustment. If fewer than 12 months have elapsed since the employee's last SES pay adjustment, an authorized agency official may approve an additional pay increase under § 534.404(c)(4) if the additional pay increase is warranted. Any pay adjustment must be made in accordance with paragraphs (b), (d), and (e) of § 534.404 and the agency's plan for adjusting SES rates of pay established under paragraph (g) of that section.

Setting Pay Upon Reassignment or Transfer

Under § 534.404(c)(4)(ii) of the proposed regulations, an authorized agency official may approve an additional increase in pay during a 12-month period if the agency head or designee determines that the increase is needed because the senior executive is being reassigned to a position with substantially greater scope and responsibility. A commenter recommended that OPM broaden this exception to include situations where an additional pay increase is needed to recruit a senior executive from a position in another agency. We agree and have revised § 534.404(c)(4)(ii) to permit an agency to provide an additional pay increase during a 12-month period if the agency head or designee determines that a pay increase is needed to recruit a senior executive with superior leadership or other competencies from a position in another agency.

Section 534.404(c)(4)(iii) permits an agency to provide an additional pay adjustment during a 12-month period to a senior executive who is critical to the mission of the agency and is likely to leave the agency in the absence of a pay increase. A commenter recommended that OPM require an agency to document the justification for an additional pay increase. We agree and have revised § 534.404(c)(5) to require an agency to provide written documentation approving any exception to the 12-month rule under § 534.404(c)(4).

Agency Plan for Setting and Adjusting SES Rates

Federal agencies requested additional guidance on the criteria they should establish to ensure that decisions on setting and adjusting SES rates of basic pay are based on individual performance and/or contributions to the agency's performance. To address these concerns, we have revised § 534.404(g)(1) to require agency plans to specify the criteria that will be used to set and adjust a senior executive's rate of basic pay to ensure that individual pay rates or pay adjustments, as well as their overall distribution within the SES rate range, reflect meaningful distinctions within a single performance rating level (*e.g.*, the higher

the employee's relative performance within a rating level, the higher the pay adjustment) and/or between performance rating levels (*e.g.*, the higher the rating level, the higher the pay adjustment). In addition, we suggest that agencies may wish to consider the senior executive's broad scope of authority and level of responsibility and his or her personal accountability for the success (or failure) of an agency's programs.

A commenter requested that OPM's regulations require agencies to provide for transparency in the processes for making pay decisions and disclose information about the operation of the SES performance management system. We have revised § 534.404(g) to require transparency in the processes for making pay decisions, while assuring confidentiality. The commenter also recommended that OPM require agencies to provide summary information concerning performance ratings and annual salary adjustments for senior executives, the percentage of senior executives who received bonuses, and the range of bonus awards granted. We do not believe this additional reporting requirement is needed, since under 5 CFR 430.405(g), agencies with certified performance appraisal systems are required to provide this information annually to OPM.

Section 5382 of title 5, United States Code, requires that an SES member will be paid at one of the rates within the SES rate range, based on individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance management system. Federal agencies requested guidance on the difference between individual performance and contribution to agency performance, since individual performance directly leads to contributing to an agency's performance. We believe the intent of the legislation is that a senior executive's pay rate may be determined based on an accomplishment that he or she attained through individual performance and/or an accomplishment attained through the management of his or her staff which contributes to the agency's performance.

Reductions in Pay

A commenter opposed the proposed rule in § 534.404(j), which would allow an agency to reduce a career SES member's rate of basic pay by up to 10 percent based on performance or conduct. The commenter stated that one of the purposes of the SES is to help maintain consistency of the civil service during political change and that the authority to reduce a senior executive's rate of basic pay by up to 10 percent may be misused to affect or influence a desired politically motivated decision. The commenter is concerned that the authority to reduce pay by 10 percent may violate the merit systems principle that employees be protected against arbitrary action or coercion for partisan political purpose under 5 U.S.C. 2301(b)(8)(A)). The commenter noted that while the reduction procedure has elements of due process within an agency, no appeal outside the agency, such as to the Merit Systems Protection Board (MSPB), is allowed. The commenter recommended that OPM reduce the maximum reduction in pay to 5 percent, comparable to the former regulatory limitation on reductions in pay of one SES pay level, which worked successfully prior to implementation of the new SES pay system.

The commenter believes that if a senior executive deserves a pay reduction of 10 percent, he or she can be removed from the SES, with the limited protections provided by law. The commenter recommends that if OPM truly believes a 10 percent reduction in pay is necessary to manage the SES, OPM should make any reduction in pay greater than 5 percent fully appealable to MSPB or delay an agency's authority to reduce pay for SES members for 1 year following issuance of OPM's final rule, consistent with Congress' prohibition against reducing the pay of an SES member for the first year after the effective date of the new SES pay system. The commenter believes that before senior executives experience the threat or possibility of a 10 percent pay reduction, they should be under new performance plans and the new performance management system for a full year.

The new SES pay system provides greater opportunities for higher rates of basic pay and larger pay adjustments, and with these opportunities come greater risks. We believe it is necessary to provide agencies with the authority to reduce basic pay up to 10 percent. Therefore, we made no changes in the regulations.

A commenter recommended that we add a statement to § 534.404(j)(2) that a reduction in pay is not an appealable action under 5 U.S.C. 7543 (removal and suspensions for more than 14 days for misconduct, negligence of duty, malfeasance, or failure to accept a directed reassignment). We agree and have added the statement to § 534.404(j)(2).

Pay Increase To Prevent Falling Below Minimum SES Rate

Under § 534.406(a) of the interim regulations (and § 534.403(a) of the proposed regulations), an SES member may not receive a rate of basic pay that is less than the minimum rate of the SES rate range. To preclude the possibility that an SES member's pay might fall below the minimum rate of the SES rate range, we have revised the regulations at § 534.404(c)(3) to provide that an increase in pay necessary to ensure that an SES member's rate of basic pay remains within the SES rate range is not considered a pay adjustment for the purpose of applying the 12-month rule in § 534.404(c).

Involuntary Removal From the SES

Federal agencies requested guidance on how to set pay for a career SES member who is receiving a rate of basic pay equivalent to the rate for level III of the Executive Schedule ($145,600 in 2004) and who is *involuntarily* removed from the SES based on a less than fully successfully performance rating. Under 5 U.S.C. 3594 and 5 CFR part 359, subpart G, a career SES employee who is *involuntarily* placed in a position outside of the SES at the GS–15 or equivalent level as the result of removal for less than fully successful performance is entitled to receive basic pay at the highest of—(1) the rate of basic pay in effect for the position in which he or she is being placed, (2) the rate of basic pay currently in effect for the position the appointee held in the civil service immediately before being appointed to the SES, or (3) the rate of basic pay in effect for the appointee immediately before removal from the SES. An employee who is placed in a General Schedule (GS) position under the provisions of 5 U.S.C. 3594 and 5 CFR part 359, subpart G, is not subject to the GS basic pay limitation of level V of the Executive Schedule, as provided in 5 U.S.C. 5303(f). Upon appointment to a GS position, the employee is entitled to receive a locality payment at the rate applicable in the locality pay area in which the employee's GS position is located, subject to 5 U.S.C. 5304(g)(1), which limits GS basic pay plus locality pay to the rate for level IV of the Executive Schedule.

In the case of an employee whose SES rate of pay was equal to the rate for level III of the Executive Schedule, his or her current SES rate of basic pay of $145,600 is the highest applicable rate, and he or she is entitled to that saved rate. Since the employee's rate of basic pay exceeds the limitation on GS basic

pay plus locality pay (level IV of the Executive Schedule), he or she may not receive a locality payment. Under 5 U.S.C. 3594, the employee also is entitled to 50 percent of any increase in the maximum rate of basic pay for the GS grade to which he or she is placed until the saved rate is equal to or lower than the maximum rate of pay for that grade, at which time the employee's pay is set at that maximum rate.

If the saved pay provisions under 5 U.S.C. 3594 are not applicable, the agency may exercise the use of pay retention as provided in 5 U.S.C. 5363 and 5 CFR part 536 in situations where an SES member moves to a GS position and the movement is caused or influenced by a management action.

Additional Payments

In the Preamble to the proposed regulations, OPM advised agencies to review any determination to provide additional payments (*e.g.,* retention allowances) to senior executives based on the senior executive's rate of basic pay, since a senior executive's rate of basic pay now includes locality payments. We remind agencies that under 5 U.S.C. 5754 and OPM's regulations at 5 CFR 575.306(a), retention allowances are expressed as a percentage of basic pay. If an employee's rate of basic pay is increased (*e.g.,* as a result of including a locality payment in the senior executive's rate of basic pay upon conversion to the new SES pay system), the dollar amount of his or her retention allowance will automatically increase unless the agency takes action to reduce the retention allowance percentage in order to retain the previous dollar value. An agency must process an SF–50 (810 action) each time the percentage of a retention allowance changes.

Executive Level Positions in Temporary Organizations

Under 5 U.S.C. 3161(d), the rate of basic pay for executive positions appointed to temporary organizations may not exceed the maximum rate of basic pay established for the SES, including any locality-based comparability payment provided under 5 U.S.C. 5304. Under 5 U.S.C. 5382, the maximum rate of basic pay for SES members is the rate for level III of the Executive Schedule, unless the employee is covered by a certified performance appraisal system as provided in 5 U.S.C. 5307(d), in which case the maximum rate of basic pay is the rate for level II of the Executive Schedule. Since senior executives in temporary organizations are not covered by the SES performance appraisal certification provision in 5 U.S.C. 5307(d), these executives do not have access to a rate higher than the rate for level III of the Executive Schedule. Therefore, we have revised §§ 534.303 and 534.304 to state that the maximum rate of basic pay for executives and certain senior staff in temporary organizations is the rate for level III of the Executive Schedule. Executives in temporary organizations are not entitled to locality pay, since SES members are no longer eligible for locality-based comparability payments as a result of the amendments made to 5 U.S.C. 5304(h).

Miscellaneous

We have added definitions of *relative performance* and *performance expectations* in § 534.402, consistent with the definitions in § 430.402; we have indicated throughout the regulations in part 534, as appropriate, the authority of an agency's Inspector General for setting and adjusting rates of pay for senior executives in the Office of the Inspector General; and we have removed subpart C of 5 CFR part 359 (Removal from the Senior Executive Service), since section 1321 of the Homeland Security Act repealed SES recertification requirements and subpart C is no longer needed.

Pay Adjustments for SES Members Without Supervisors

A commenter recommended that OPM develop a new pay system to allow a higher maximum rate of basic pay for senior executives who do not have a superior within their agencies who can evaluate their performance (*e.g.,* senior executives in small agencies where political appointments have not occurred) and for Inspectors General. This recommendation is beyond the scope of these regulations. Legislation would be needed to provide a higher maximum rate of basic pay to these employees.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply to only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Parts 317, 352, 359, 451, 530, 531, 534, and 575

Administrative practice and procedure, Decorations, medals, awards, Government employees, Law enforcement officers, Reporting and recordkeeping requirements, Hospitals, Students, and Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ The interim rule published January 13, 2004, at 69 FR 2048 is adopted as final with the changes set forth below, and OPM further amends 5 CFR chapter I as follows:

PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

■ 1. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 1302 and 3596, unless otherwise noted.

Subpart C—[Removed and Reserved]

■ 2. Subpart C (§§ 359.301—359.304) is removed and reserved.

PART 451—EMPLOYEE AWARDS

Subpart A—Agency Awards

■ 3. The authority citation for part 451 continues to read as follows:

Authority: 5 U.S.C. 4302, 4501–4509; E.O. 11438, 12828.

■ 4. In § 451.101 paragraph (d), remove the reference ''534.403'' and add the reference ''534.405'' in its place, and add a new paragraph (e) to read as follows:

§ 451.101 Authority and coverage.

* * * * *

(e) An agency may grant performance-based cash awards (i.e., on the basis of a rating of record) under the authority of 5 U.S.C. 4505a and the provisions of this part to eligible non-GS employees who are covered by 5 U.S.C. chapter 45 and this part, and who are not otherwise covered by an explicit statutory authority for the payment of such awards, including 5 U.S.C. 5384 (SES performance awards).

■ 5. In § 451.104(a)(3), remove the reference ''534.403'' and add the reference ''534.405'' in its place.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

■ 6. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 5305 and 5307; E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316.

Subpart B also issued under secs. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990, Public Law 101–509, 104 Stat. 1462 and 1466, respectively.

Subpart C also issued under sec. 4 of the Performance Management and Recognition System Termination Act of 1993, Public Law 103–89, 107 Stat. 981; and sec. 1322 of the Chief Human Capital Officers Act of 2002, Public Law 107–296, 116 Stat. 2297 (5 U.S.C. 5307).

■ 7. Revise subpart B to read as follows:

Subpart B—Aggregate Limitation on Pay

Sec.

Subpart B—Aggregate Limitation on Pay

§ 530.201 Purpose.

This subpart establishes regulations for limiting an employee's aggregate annual compensation. An employee's aggregate compensation received in any given calendar year may not exceed the rate of pay for level I of the Executive Schedule or the rate payable to the Vice President at the end of the calendar year, whichever is applicable to the employee based on the certification status under 5 CFR part 430, subpart D, of the performance appraisal system covering that employee. These regulations must be applied in conjunction with 5 U.S.C. 5307.

§ 530.202 Definitions.

In this subpart:

Agency means an executive agency as defined at 5 U.S.C. 105.

Aggregate compensation means the total of—

(1) Basic pay received as an employee of the executive branch or as an employee outside the executive branch to whom the General Schedule applies;

(2) Locality payments under 5 U.S.C. 5304; continued rate adjustments under 5 CFR part 531, subpart G; or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509);

(3) Premium pay under 5 U.S.C. chapter 53, subchapter IV;

(4) Premium pay under 5 U.S.C. chapter 55, subchapter V;

(5) Incentive awards and performance-based cash awards under 5 U.S.C. chapters 45 and 53;

(6) Recruitment and relocation bonuses under 5 U.S.C. 5753;

(7) Retention allowances under 5 U.S.C. 5754 and extended assignment incentives under 5 U.S.C. 5757;

(8) Supervisory differentials under 5 U.S.C. 5755;

(9) Post differentials under 5 U.S.C. 5925;

(10) Danger pay allowances under 5 U.S.C. 5928;

(11) Post differentials based on environmental conditions for employees stationed in nonforeign areas under 5 U.S.C. 5941(a)(2);

(12) Physicians' comparability allowances under 5 U.S.C. 5948;

(13) Continuation of pay under 5 U.S.C. 8118;

(14) Lump-sum payments in excess of the aggregate limitation on pay as required by § 530.204; and

(15) Other similar payments authorized under title 5, United States Code, excluding—

(i) Overtime pay under the Fair Labor Standards Act of 1938, as amended, and 5 CFR part 551;

(ii) Severance pay under 5 U.S.C. 5595;

(iii) Lump-sum payments for accumulated and accrued annual leave upon separation under 5 U.S.C. 5551 or 5552;

(iv) Back pay awarded to an employee under 5 U.S.C. 5596 because of an unjustified personnel action;

(v) Student loan repayments under 5 U.S.C. 5379; and

(vi) Nonforeign area cost-of-living allowances under 5 U.S.C. 5941(a)(1).

Aggregate limitation means the limitation on aggregate compensation received in any given calendar year as established by 5 U.S.C. 5307. For an executive branch employee (including employees in Senior Executive Service positions paid under 5 U.S.C. 5383 and employees in senior-level or scientific or professional positions paid under 5 U.S.C. 5376), a General Schedule employee in the legislative branch, or General Schedule employee in the judicial branch (excluding those paid under 28 U.S.C. 332(f), 603, and 604), the limitation on aggregate compensation is equal to the rate for level I of the Executive Schedule in effect at the end of the applicable calendar year. For an employee in a Senior Executive Service position paid under 5 U.S.C. 5383 and an employee in a senior-level or scientific or professional position paid under 5 U.S.C. 5376 covered by an applicable performance appraisal system that has been certified under 5 CFR part 430, subpart D, the limitation on aggregate compensation is equal to the total annual compensation payable to the Vice President under 3 U.S.C. 104 at the end of a calendar year.

Basic pay means the total amount of pay received at a rate fixed by law or administrative action for the position held by an employee, before any deductions. Basic pay includes night and environmental differentials for prevailing rate employees under 5 U.S.C. 5343(f) and 5 CFR 532.511. Basic pay excludes additional pay of any other kind, including locality payments under 5 U.S.C. 5304.

Discretionary payment means a payment an agency has discretion to make or not to make to an employee. A retention allowance under 5 U.S.C. 5754 and an extended assignment incentive under 5 U.S.C. 5757 are discretionary payments. However, other payments that are preauthorized to be made to an employee at a regular fixed rate each pay period are not discretionary payments.

Employee has the meaning given that term in 5 U.S.C. 2105.

Estimated aggregate compensation means the agency's projection of the aggregate compensation an employee actually would receive during a calendar year but for application of the aggregate limitation to future payments. This projection must be based upon known factors. Estimated aggregate compensation includes—

(1) The total amount of basic pay the employee will receive during the calendar year;

(2) Any lump-sum payment of excess amounts from a previous calendar year, as described in § 530.204;

(3) The total amount of nondiscretionary payments the employee would be entitled to receive during the calendar year; and

(4) The total amount of discretionary payments the employee would be authorized to receive during the calendar year.

§ 530.203 Administration of aggregate limitation on pay.

(a) Except as provided in paragraph (b) of this section, no executive branch employee or General Schedule employee in the legislative branch (or General Schedule employee in the judicial branch, excluding those paid under 28 U.S.C. 332(f), 603, and 604), may receive any allowance, differential, bonus, award, or other similar cash payment under title 5, United States Code, in any calendar year which, in combination with the employee's basic pay (whether received under title 5, United States Code, or otherwise), would cause the employee's aggregate compensation to exceed the rate for level I of the Executive Schedule on the last day of that calendar year (*i.e.*, the aggregate limitation).

(b)(1) Subject to paragraph (b)(2) of this section, an employee in a Senior Executive Service position paid under 5 U.S.C. 5383 and an employee in a

senior-level or scientific or professional position paid under 5 U.S.C. 5376 may not receive any allowance, differential, bonus, award, or other similar cash payment under title 5, United States Code, in any calendar year which, in combination with the employee's basic pay, would cause the employee's aggregate compensation to exceed the rate of pay for level I of the Executive Schedule.

(2) An employee covered by a performance appraisal system that has been certified under 5 CFR part 430, subpart D, may not receive any allowance, differential, bonus, award, or other similar cash payment under title 5, United States Code, in any calendar year which, in combination with the employee's basic pay, would cause the employee's aggregate compensation to exceed the total annual compensation payable to the Vice President under 3 U.S.C. 104 on the last day of that calendar year (*i.e.*, the aggregate limitation).

(3) An agency must make corrective actions as provided in paragraphs (g) and (h) of this section if the agency underestimated or overestimated an employee's aggregate compensation in a calendar year as a result of receiving or losing certification of its applicable performance appraisal system under 5 CFR part 430, subpart D.

(c) The aggregate limitations described in paragraphs (a) and (b) of this section apply to the aggregate compensation an employee actually received during the calendar year without regard to when the compensation was earned.

(d) When an agency authorizes a discretionary payment for an employee, the agency must defer any portion of such payment that, when added to the estimated aggregate compensation the employee is projected to receive, would cause the employee's aggregate compensation during the calendar year to exceed the applicable aggregate limitation. Any portion of a discretionary payment deferred under this paragraph must be available for payment as provided in § 530.204. Special rules apply to the authorization and payment of a retention allowance, which may not be deferred. (*See* 5 CFR 575.306(b) and 575.307(a).) A retention allowance must be reduced or terminated before deferring any other type of discretionary payment, as long as the other discretionary payment is required to be paid within the current calendar year under a mandatory personnel policy or has been officially approved by an authorized agency official for payment within the current calendar year. When a discretionary payment is authorized but not required to be paid in the current calendar year, an agency official's decision to set the payment date in the next calendar year is not considered a deferral under this paragraph.

(e) An agency may not defer or discontinue nondiscretionary payments for any period of time to make a discretionary payment that would otherwise cause an employee's pay to exceed the applicable aggregate limitation. An agency may not defer or discontinue basic pay under any circumstance.

(f) If, after an agency defers discretionary payments as required by paragraph (d) of this section, the estimated aggregate compensation to which an employee is entitled exceeds the applicable aggregate limitation, the agency must defer all nondiscretionary payments (other than basic pay) as necessary to avoid payments in excess of that limitation. An agency must defer all nondiscretionary payments at the time when otherwise continuing to pay such payments would cause an employee's estimated aggregate compensation for that calendar year to exceed the applicable aggregate limitation. An agency must pay any portion of a nondiscretionary payment deferred under this paragraph at a later date, as provided in § 530.204.

(g)(1) If an agency determines that it underestimated an employee's aggregate compensation at an earlier date in the calendar year, or the aggregate limitation applicable to the employee is reduced during the calendar year, the sum of the employee's remaining payments of basic pay may exceed the difference between the aggregate compensation the employee has actually received to date in that calendar year and the applicable aggregate limitation. In such cases, the employee will become indebted to the Federal Government for any amount paid in excess of the applicable aggregate limitation. The head of the agency may waive the debt under 5 U.S.C. 5584, if warranted.

(2) To the extent that any excess amount is attributable to amounts that should have been deferred and would have been payable at the beginning of the next calendar year, an agency must extinguish the excess amount on January 1 of the next calendar year. As part of the correction of the error, the agency must deem the excess amount to have been paid on January 1 of the next calendar year (when the debt was extinguished) as if it were a deferred excess payment, as described in § 530.204, and must consider this deemed deferred excess payment to be part of the employee's aggregate compensation for the new calendar year.

(3) To the extent that any excess amount is attributable to retention allowances that the agency inadvertently did not reduce or terminate under 5 CFR 575.307(a), the employee will become indebted to the Federal Government for any amount attributable to retention allowance payments that were paid in excess of the applicable aggregate limitation. The head of the agency may waive the debt under 5 U.S.C. 5584, if warranted.

(h) If an agency determines that it overestimated an employee's aggregate compensation at an earlier date in the calendar year, which caused the agency to defer payments unnecessarily under this section, or the aggregate limitation applicable to the employee is increased during the calendar year, the agency may make appropriate corrective payments to the employee during the calendar year, notwithstanding § 530.204.

§ 530.204 Payment of excess amounts.

(a) An agency must pay the amounts that were deferred because they were in excess of the aggregate limitation (as described in § 530.203) as a lump-sum payment at the beginning of the following calendar year, except as otherwise provided in this section. This payment is part of the employee's aggregate compensation for the new calendar year.

(b) If a lump-sum payment under paragraph (a) of this section causes an employee's estimated aggregate compensation to exceed the aggregate limitation in the current calendar year, an agency must consider only the employee's basic pay that is expected to be paid in the current year in determining the extent to which the lump-sum payment may be paid. An agency must defer all other payments, as provided in § 530.203, in order to pay as much of the lump-sum excess amount as possible. Any payments deferred under this paragraph, including any portion of the lump-sum excess amount that was not payable, are payable at the beginning of the next calendar year, as provided in paragraph (a) of this section.

(c) If an employee transfers to another agency, the gaining agency is responsible for making any lump-sum payment required by paragraph (a) of this section. The previous employing agency must provide the gaining agency with documentation regarding the employee's excess amount, as provided in § 530.205. The previous employing agency must provide a fund transfer equal to the total cost of the lump-sum

payment to the gaining agency through the Department of the Treasury's Intra-Governmental Payment and Collection System. If an employee leaves Federal service, the employing agency is responsible for making the lump-sum payment to the employee as provided in paragraph (d) of this section.

(d) An agency must pay any excess amount regardless of the calendar year limitation under the following conditions:

(1) If an employee dies, the employing agency must pay the entire excess amount as part of the settlement of accounts, in accordance with 5 U.S.C. 5582.

(2) If an employee separates from Federal service, the employing agency must pay the entire excess amount following a 30-day break in service. If the individual is reemployed in the Federal service within the same calendar year as the separation, any previous payment of an excess amount must be considered part of that year's aggregate compensation for the purpose of applying the aggregate limitation for the remainder of the calendar year.

§ 530.205 Records.

An agency must maintain appropriate records to administer this subpart and must transfer such records to any agency to which an employee may transfer. An agency must make such records available to any agency that may employ the employee later during the same calendar year. An agency's records must document the source of any deferred excess amount remaining to the employee's credit at the time of separation from the agency. In the case of an employee who separates from Federal service for at least 30 days, the agency records also must document any payment of a deferred excess amount made by the agency after separation.

PART 534—PAY UNDER OTHER SYSTEMS

■ 8–9. The authority citation for part 534 is revised to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5382, 5383, 5384, 5385, 5541, 5550a, and sec. 1125 of the National Defense Authorization Act for FY 2004, Public Law 108–136, 117 Stat. 1638 (5 U.S.C. 5304, 5382, 5383, 7302; 18 U.S.C. 207).

Subpart C—Basic Pay for Employees of Temporary Organizations

■ 10. Section 534.303 is revised to read as follows:

§ 534.303 Basic pay for executive level positions.

Rates of basic pay for executive level positions of temporary organizations may not exceed the rate for level III of the Executive Schedule.

■ 11. Section 534.304(c) is revised to read as follows:

§ 534.304 Basic pay for staff positions.

* * * * *

(c) Notwithstanding the limitations in paragraphs (a) and (b) of this section, the rate of basic pay and locality-adjusted rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of a temporary organization to be exceptional, exceed the maximum rates established under those paragraphs. However, the higher payable rates may not exceed the rate for level III of the Executive Schedule.

Subpart D—Pay and Performance Awards Under the Senior Executive Service

■ 12. Section 534.401 is revised to read as follows:

§ 534.401 Purpose.

This subpart contains the rules for setting and adjusting rates of basic pay and granting performance awards for members of the Senior Executive Service (SES), as provided by 5 U.S.C. 5382, 5383, and 5384. An agency must set and adjust the rate of basic pay for an SES member on the basis of the employee's performance and/or contribution to the agency's performance, as determined by the agency through the administration of its performance management system(s) for senior executives. These regulations must be read in combination with applicable statutes and with the regulations for the approval of an SES performance management system under 5 CFR part 430, subpart C, and certification of an SES performance appraisal system under 5 CFR part 430, subpart D.

■ 13. Section 534.402 is revised to read as follows:

§ 534.402 Definitions.

In this subpart—

Agency means an executive agency or military department, as defined by 5 U.S.C. 105 and 102.

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned. The agency's Inspector General is the *authorized agency official* for senior executive positions in the Office of the Inspector General, consistent with the requirements in section 3(a) of the Inspector General Act of 1978.

Outstanding performance means performance that substantially exceeds the normally high performance expected of any senior executive, as evidenced by exceptional accomplishments or contributions to the agency's performance.

Performance expectations means the critical and other performance elements and performance requirements that constitute the senior executive performance plans (as defined in § 430.303).

PRB means Performance Review Board, as described in § 430.310.

Rate of basic pay means the rate of pay fixed by law or administrative action for the senior executive, within the established SES rate range or, in the case of a senior executive entitled to pay retention, the employee's retained rate of pay, excluding any applicable locality-based comparability payments under 5 U.S.C. 5304, but before any deductions and exclusive of additional pay of any other kind.

Relative performance means the performance of a senior executive with respect to the performance of other senior executives, including their contribution to agency performance, where appropriate, as determined by the application of a certified performance appraisal system under 5 CFR part 430, subpart D.

Senior executive means a member of the Senior Executive Service (SES) paid under 5 U.S.C. 5383.

SES rate means a rate of basic pay within the SES rate range assigned to a member of the SES under § 534.403(a).

SES rate range means the range of rates of basic pay established for the SES under 5 U.S.C. 5382 and § 534.403(a).

§§ 534.403 and 534.405 [Redesignated as §§ 534.405 and 534.408]

■ 14. Redesignate §§ 534.403 and 534.405 as §§ 534.405 and 534.408, respectively.

■ 15. Add new § 534.403 to read as follows:

§ 534.403 SES rate range.

(a) *SES rate range.* (1) On the first day of the first applicable pay period beginning on or after January 1, 2004, the minimum rate of basic pay of the SES rate range is set at an amount equal to the minimum rate of basic pay under 5 U.S.C. 5376 for senior-level positions (excluding any locality-based comparability payment under 5 U.S.C. 5304). The minimum rate of basic pay for the SES rate range will increase

consistent with any increase in the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376. An SES member may not receive less than the minimum rate of the SES rate range. Except as provided in paragraph (a)(2) of this section, the maximum rate of basic pay of the SES rate range is set at the rate for level III of the Executive Schedule. An SES member's rate of basic pay must be set at one of the rates within the SES rate range based on the senior executive's performance and/or contribution to the agency's performance.

(2) The maximum rate of basic pay of the SES rate range is set at the rate for level II of the Executive Schedule for senior executives in an agency who are covered by a performance appraisal system that makes meaningful distinctions based on relative performance, as certified by the Office of Personnel Management (OPM), with concurrence by the Office of Management and Budget (OMB), under 5 U.S.C. 5307(d) and 5 CFR part 430, subpart D. A senior executive's rate of basic pay may not exceed the maximum rate of the applicable SES rate range, except as provided in § 534.404(h)(2). The applicable maximum rate of basic pay for the SES rate range will increase with any increase in the rate for levels II or III of the Executive Schedule under 5 U.S.C. 5318.

(3) Rates of basic pay higher than the rate for level III of the Executive Schedule but less than or equal to the rate for level II of the Executive Schedule generally are reserved for those senior executives who have demonstrated the highest levels of individual performance and/or made the greatest contributions to the agency's performance, as determined by the agency through the administration of its performance appraisal system for senior executives, or, in the case of newly-appointed senior executives, those who possess superior leadership or other competencies, consistent with the agency's strategic human capital plan.

(b) *Suspension of certification of performance appraisal system.* A senior executive whose rate of basic pay is higher than the rate for level III of the Executive Schedule may not suffer a reduction in pay because his or her agency's applicable performance appraisal system certification is suspended under 5 CFR 430.405(h). The senior executive will continue to receive his or her current SES rate and is not eligible for a pay adjustment until the senior executive is assigned to a position that would allow the employee to receive a pay adjustment or until certification of the employing agency's applicable performance appraisal system is reinstated under 5 CFR part 430, subpart D. The SES rate of pay is not considered a retained rate of pay for the purpose of applying 5 U.S.C. 3594 and 5 CFR part 359, subpart G, or 5 U.S.C. 5363 and 5 CFR 536.104.

■ 16. Section 534.404 is revised to read as follows:

§ 534.404 Setting and adjusting pay for senior executives.

(a) *Setting pay upon initial appointment to the SES.* An authorized agency official may set the rate of basic pay of an individual at any rate within the SES rate range upon initial appointment to the SES, subject to the limitation on the maximum rate of basic pay in § 534.403(a). Rates of basic pay above the rate for level III of the Executive Schedule but less than or equal to the rate for level II of the Executive Schedule generally are reserved for those newly appointed senior executives who possess superior leadership or other competencies, as determined by the agency as part of its strategic human capital plan. In setting a new senior executive's rate of basic pay, an agency must consider the nature and quality of the individual's experience, qualifications, and accomplishments as they relate to the requirements of the SES position, as well as the individual's current responsibilities.

(b) *Adjusting the pay of SES members.* (1) An authorized agency official may adjust (increase or reduce) the rate of basic pay of a senior executive consistent with the agency's plan for setting and adjusting SES rates of basic pay under paragraph (g) of this section.

(2) A senior executive who receives an annual summary rating of outstanding performance must be considered for an annual pay increase, subject to the limitation on the maximum rate of basic pay in § 534.403(a).

(3) An agency may provide a pay increase to allow a senior executive to advance his or her relative position within the SES rate range only upon a determination by the authorized agency official that the senior executive's individual performance and/or contributions to agency performance so warrant. In assessing a senior executive's performance and/or contribution to the agency's performance, the authorized agency official may consider such things as unique skills, qualifications, or competencies that the individual possesses, and their significance to the agency's performance, as well as the senior executive's current responsibilities. Senior executives who demonstrate the highest levels of individual performance and/or make the greatest contributions to the agency's performance, as determined by the agency through the administration of its performance appraisal system, or, in the case of newly-appointed senior executives, those who possess superior leadership or other competencies, as determined by the agency as part of its strategic human capital plan, must receive the highest rates of basic pay or pay adjustments.

(4)(i) On the effective date of an increase in the minimum or maximum rate of basic pay of the SES rate range under § 534.403(a)(1) or (2), an authorized agency official may increase the rate of basic pay of a senior executive who meets or exceeds his or her performance expectations by an amount that does not exceed the amount necessary to maintain the senior executive's relative position in the SES rate range, except as provided in paragraph (b)(4)(ii) and (b)(4)(iii) of this section. A pay increase made under this paragraph is not considered a pay adjustment for the purpose of applying § 534.404(c).

(ii) A pay increase under paragraph (b)(4)(i) of this section may not be provided to a senior executive whose rate of basic pay is at or below the rate for level III of the Executive Schedule if such an increase would cause the senior executive's rate of basic pay to exceed the rate for level III of the Executive Schedule unless the senior executive has received an annual summary rating of outstanding for the most recently completed appraisal period and the agency head or designee who performs the functions described in 5 CFR 430.404(a)(5) or (6) (including the Inspector General, where applicable) has approved the increase in pay.

(iii) A pay increase under paragraph (b)(4)(i) of this section may not be provided to a senior executive whose rate of basic pay is above the rate for level III of the Executive Schedule unless the senior executive has received an annual summary rating of outstanding for the most recently completed appraisal period and the agency head or designee who performs the functions described in 5 CFR 430.404(a)(5) or (6) (including the Inspector General, where applicable) has approved the increase in pay. However, in the case of a senior executive whose rate of basic pay is above the rate for level III of the Executive Schedule and who has been rated below outstanding, but above fully successful, for the most recently

completed appraisal period, the agency head or designee who performs the functions described in 5 CFR 430.404(a)(5) or (6) (including the Inspector General, where applicable) may approve such a pay increase in limited circumstances, such as for an exceptionally meritorious accomplishment.

(5) A senior executive who receives a summary rating of less than fully successful may not receive an increase in pay for the current appraisal period.

(6) An authorized agency official may reduce the rate of basic pay of a senior executive for performance and/or disciplinary reasons, consistent with the restrictions on reducing the rate of basic pay of a career senior executive in paragraph (j) of this section and in § 534.406(b).

(c) *12-month rule.* (1) An authorized agency official may adjust (*i.e.*, increase or reduce) the rate of basic pay of a senior executive not more than once during any 12-month period. However, an agency may make a determination to provide an additional pay increase under certain conditions as prescribed in paragraph (c)(3) and (4) of this section without regard to whether the senior executive has received a pay adjustment during the previous 12-month period.

(2) The following pay actions are considered pay adjustments for the purpose of applying this paragraph:

(i) The setting of an individual's rate of basic pay upon initial appointment or reappointment to the SES under paragraphs (a) and (i)(1) of this section and upon reinstatement to the SES under paragraph (i)(2)(ii) of this section; and

(ii) Any adjustment (increase or reduction) in an SES rate of basic pay granted to a senior executive, except as provided in paragraph (c)(3) of this section.

(3) The following pay actions are not considered pay adjustments for the purpose of applying this paragraph:

(i) The conversion of senior executives to the new SES pay system under § 534.406 and the conversion of other employees to equivalent senior executive positions;

(ii) A determination by an authorized agency official to make a zero adjustment in pay after reviewing a senior executive's annual summary rating;

(iii) A zero adjustment in pay made during the 12-month period preceding the first day of the first applicable pay period beginning on or after January 1, 2004, caused by the former limitation on basic pay plus locality-based comparability payments under 5 U.S.C. 5304(g)(2) for a senior executive who was granted an increase in his or her rate of basic pay that did not result in an actual increase in pay;

(iv) A determination to provide an additional pay increase under paragraph (f) of this section when there is an increase in Executive Schedule rates of pay;

(v) A determination to provide a pay increase under paragraph (b)(4) of this section to allow a senior executive to maintain his or her relative position in the SES rate range; and

(vi) An increase in pay equivalent to the minimum amount necessary to ensure that a senior executive's rate of basic pay does not fall below the minimum rate of the SES rate range.

(4) An authorized agency official may approve increases in a senior executive's rate of basic pay more than once during a 12-month period if the agency head or designee who performs the functions described in 5 CFR 430.404(a)(5) or (6) (including the Inspector General, where applicable) determines that—

(i) The senior executive's exceptionally meritorious accomplishment significantly contributes to the agency's performance;

(ii) A pay increase is necessary to reassign a senior executive to a position with substantially greater scope and responsibility or to recruit a senior executive with superior leadership or other competencies from a position in another agency;

(iii) The retention of the senior executive is critical to the mission of the agency and the senior executive would be likely to leave the agency in the absence of a pay increase; or

(iv) Such action conforms to an otherwise applicable executive appraisal and pay adjustment cycle (*e.g.*, in the case of a senior executive who was appointed to an SES position within the past 12 months or a senior executive who was transferred to an SES position from an agency with a different senior executive appraisal and pay adjustment cycle within the past 12 months).

(5) An authorized agency official must provide written documentation approving an exception under paragraph (c)(4) of this section. Any pay adjustment made as a result of a determination under paragraph (c)(4) of this section is considered a pay adjustment for the purpose of applying § 534.404(c) and begins a new 12-month period.

(d) *Adjustments in pay prior to certification of applicable performance appraisal system.* An authorized agency official may adjust a senior executive's rate of basic pay converted under § 534.406 on the first day of the first applicable pay period beginning on or after January 1, 2004, or on any date thereafter prior to obtaining certification under 5 CFR part 430, subpart D, but only up to the rate for level III of the Executive Schedule. The authorized agency official may provide an increase in pay if warranted under the conditions prescribed in paragraph (b) of this section and the senior executive is otherwise eligible for such an increase (*i.e.*, he or she did not receive a pay adjustment under § 534.404(c) during the previous 12-month period). An adjustment in pay made under this paragraph is considered a pay adjustment for the purpose of applying § 534.404(c).

(e) *Adjustments in pay after certification of applicable performance appraisal system.* In the case of an agency that obtains certification of a performance appraisal system for senior executives under 5 CFR part 430, subpart D, an authorized agency official may increase a covered senior executive's rate of basic pay up to the rate for level II of the Executive Schedule, consistent with the limitation on increasing pay above the rate for level III of the Executive Schedule in § 534.403(a)(2). The authorized agency official may provide an increase in pay if warranted under the conditions prescribed in paragraph (b) of this section and the senior executive is otherwise eligible for such an increase (*i.e.*, he or she did not receive a pay adjustment under § 534.404(c) during the previous 12-month period). An adjustment in pay made under this paragraph is considered a pay adjustment for the purpose of applying § 534.404(c).

(f) *Effect of increase in Executive Schedule rates of pay.* (1) If there is an additional increase in the rates for the Executive Schedule in a calendar year, and if that increase becomes effective on the first day of the first pay period beginning on or after January 1 (*i.e.*, the date prescribed in 5 U.S.C. 5318), an agency may review any previous determination to adjust the pay of a senior executive that was made effective on or after the effective date of the first increase in the rates for the Executive Schedule to determine whether, and to what extent, an additional pay increase may be warranted for senior executives based on the same criteria used for the previous determination. If the agency determines that an additional pay increase is warranted, that increase must be made effective as of the effective date of the previous pay increase and is not considered a pay

adjustment for the purpose of applying § 534.404(c).

(2) If there is an increase in the rates of pay for the Executive Schedule under 5 U.S.C. 5318 after an agency has already granted pay increases to its senior executives following the applicable performance appraisal period, an agency may review any previous determination to increase the pay of a senior executive whose rate of basic pay is equivalent to the rate for level II (if covered under a performance appraisal system that is certified) or level III (if covered under a performance appraisal system that is not certified) when the applicable maximum rate is increased to determine whether, and to what extent, an additional pay increase may be warranted for the senior executive based on the same criteria used for the previous determination. The determination to provide an additional pay increase must be approved and made effective as of the effective date of increases in the Executive Schedule under 5 U.S.C. 5318 (*i.e.*, the first day of the first pay period beginning on or after January 1). An additional pay increase under this paragraph is not considered a pay adjustment for the purpose of applying § 534.404(c).

(g) *Agency plan for setting and adjusting SES rate of basic pay.* Each agency must establish a plan for setting and adjusting the rates of basic pay for SES members. Agencies must provide for transparency in the processes for making pay decisions, while assuring confidentiality. In developing its plan for setting and adjusting SES rates, an agency may consider the senior executive's broad scope of authority and level of responsibility and his or her personal accountability for the success (or failure) of an agency's programs. The agency's plan must require that any decisions to adjust pay must reflect meaningful distinctions among senior executives based on individual performance and/or contribution to agency performance and must include—

(1) The criteria that will be used to set and adjust a senior executive's rate of basic pay to ensure that individual pay rates or pay adjustments, as well as their overall distribution within the SES rate range, reflect meaningful distinctions within a single performance rating level (*e.g.*, the higher the employee's relative performance within a rating level, the higher the pay adjustment) and/or between performance rating levels (*e.g.*, the higher the rating level, the higher the pay adjustment);

(2) The criteria that will be used to set and adjust a senior executive's rate of basic pay at a rate that exceeds the rate for level III of the Executive Schedule if the applicable agency performance appraisal system has been certified under 5 CFR part 430, subpart D;

(3) The designation of the authorized agency official who has authority to set and adjust SES rates of pay for individual senior executives, subject to the requirement that the agency head or designee who performs the functions described in 5 CFR 430.404(a)(5) and (6) (including the Inspector General, where applicable) must approve any determination to set a senior executive's rate of basic pay higher than the rate for level III of the Executive Schedule and must approve any determination to increase a senior executive's rate of basic pay more than once in any 12-month period; and

(4) The administrative and management controls that will be applied to ensure compliance with applicable statutes, OPM's regulations, the agency's plan, and, where applicable, the certification requirements set forth in 5 CFR 430, subpart D, and the limitation on the maximum rate of basic pay in § 534.403(a).

(h) *Setting pay upon transfer.* (1) An authorized agency official may set the pay of a senior executive transferring from another agency at any rate within the SES rate range, subject to the limitation on the maximum rate of basic pay in § 534.403(a) and the restrictions on reducing the pay of career senior executives in paragraph (h)(2) of this section (upon transfer to an agency whose applicable performance appraisal system is not certified) and in § 534.406(b) (for 12 months following the effective date of the new SES pay system). If pay is set at the same SES rate the senior executive received in his or her former agency, the action is not considered a pay adjustment for the purpose of applying § 534.404(c).

(2) A senior executive whose rate of basic pay is higher than the rate for level III of the Executive Schedule may not suffer a reduction in pay as a result of transferring to an agency where the maximum rate of basic pay for the applicable SES rate range is equal to the rate for level III of the Executive Schedule. The senior executive will continue to receive his or her current SES rate and is not eligible for a pay adjustment until the senior executive is assigned to a position that would allow the employee to receive a pay adjustment or the employing agency's applicable performance appraisal system is certified under 5 CFR part 430, subpart D. The SES rate of pay is not considered a retained rate of pay for the purpose of applying 5 U.S.C. 3594 and 5 CFR part 359, subpart G, or 5 U.S.C. 5363 and 5 CFR 536.104.

(i) *Setting pay following a break in SES service.* (1) *General.* Upon reappointment to the SES, an authorized agency official may set the rate of basic pay of a former senior executive at any rate within the SES rate range, subject to the limitations in § 534.403(a), if there has been a break in SES service of more than 30 days. If there has been a break in SES service of 30 days or less, the senior executive's rate of basic pay may be set at any rate within the SES rate range (without regard to whether the employee received a pay adjustment during the previous 12-month period), but not higher than the senior executive's former SES rate of basic pay. Where there has been a break in service of 30 days or less, the agency head or designee who performs the functions described in 5 CFR 430.404(a)(5) and (6) (including the Inspector General, where applicable) may approve a higher rate than the senior executive's former rate of basic pay, if warranted. Setting a rate of basic pay upon reappointment to the SES is considered a pay adjustment under § 534.404(c).

(2) *Reinstatement from a Presidential appointment requiring Senate confirmation.* The following provisions apply to a former career senior executive who is reinstated under 5 CFR 317.703:

(i) If the individual elected to remain subject to the SES pay provisions while serving under a Presidential appointment, his or her SES rate may be adjusted upon reinstatement to the SES, whether in the agency where the individual held the Presidential appointment or in another agency, if at least 12 months have elapsed since the employee's last SES pay adjustment. If fewer than 12 months have elapsed since the employee's last SES pay adjustment, an authorized agency official may approve an additional pay increase under § 534.404(c)(4) if the additional pay increase is warranted. Any pay adjustment must be made in accordance with paragraphs (b), (d), and (e) of this section and the agency's plan for adjusting SES rates of pay in paragraph (g) of this section.

(ii) If the individual did not elect to remain subject to the SES pay provisions while serving under a Presidential appointment, his or her SES rate may be set upon reinstatement to the SES at any rate within the SES rate range, subject to the limitations in § 534.403(a).

(iii) Setting a rate of basic pay upon reinstatement to the SES under paragraphs (i)(2)(i) and (ii) of this

section is considered a pay adjustment for the purpose of applying § 534.404(c).

(j) *Restrictions on reducing the pay of career senior executives.*

(1) An authorized agency official may reduce a career senior executive's SES rate of basic pay by not more than 10 percent for performance or disciplinary reasons, subject to the restriction on reducing the pay of career senior executives in § 534.406(b) or setting pay below the minimum rate of the SES rate range in § 534.403(a).

(2) The SES rate of basic pay of a career senior executive may be reduced without the employee's consent by the senior executive's agency or upon transfer of function to another agency only—

(i) If the senior executive has received a less than fully successful annual summary rating under 5 CFR part 430, subpart C, or has otherwise failed to meet the performance requirements for a critical element as defined in 5 CFR 430.303; or

(ii) As a disciplinary or adverse action resulting from conduct-related activity, including, but not limited to, misconduct, neglect of duty, or malfeasance.

(3) Prior to reducing a career senior executive's rate of basic pay, the agency must provide the senior executive with the following:

(i) Written notice of such reduction at least 15 days in advance of its effective date;

(ii) A reasonable period of time, but not less than 7 days, for the senior executive to respond to such notice orally and/or in writing and to furnish affidavits and other documentary evidence in support of that response;

(iii) An opportunity to be represented in the matter by an attorney or other representative;

(iv) A written decision and specific reasons for the pay reduction at the earliest practicable date after the senior executive's response, if any; and

(v) An opportunity to request, within 7 days after the date of that decision, reconsideration by the head of the agency, whose determination with respect to that request will be final and not subject to further review.

(4) Reductions in pay under paragraph (j) of this section are not appealable under 5 U.S.C. 7543.

■ 17. In newly redesignated § 534.405, revise paragraphs (a)(2)(i), (b), (c), and (f) to read as follows:

§ 534.405 Performance Awards.

(a) * * *

(2) * * *

(i) A former SES career appointee who elected to retain award eligibility under 5 CFR part 317, subpart H. If the rate of basic pay of the individual is higher than the maximum rate of basic pay for the applicable SES rate range, the maximum rate of that SES rate range is used for crediting the agency award pool under paragraph (b) of this section and the amount the individual may receive under paragraph (c) of this section.

* * * * *

(b)(1) The total amount of performance awards paid during a fiscal year by an agency may not exceed the greater of—

(i) Ten percent of the aggregate career SES rates of basic pay for the agency as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or

(ii) Twenty percent of the average annual rates of basic pay for career SES appointees of the agency as of the end of the fiscal year prior to the fiscal year in which the award payments are made.

(2) In determining the aggregate career SES rates of basic pay and the average annual rate of basic pay as of the end of FY 2003 for the purpose of applying paragraph (b) of this section, agencies must use the annual rate of basic pay, plus any applicable locality-based comparability payment under 5 U.S.C. 5304 or special geographic pay adjustment established for law enforcement officers under section 404(a) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), which the SES appointees were receiving at the end of FY 2003.

(c) The amount of a performance award paid to an individual career appointee may not be less than 5 percent nor more than 20 percent of the appointee's SES rate of basic pay as of the end of the performance appraisal period.

* * * * *

(f) Performance awards must be paid in a lump sum except in those instances when it is not possible to pay the full amount because of the applicable aggregate limitation on pay during a calendar year under 5 CFR part 530, subpart B. In that case, any amount in excess of the applicable aggregate limitation must be paid at the beginning of the following calendar year in accordance with 5 CFR part 530, subpart B. The full performance award, however, is charged against the agency bonus pool under § 534.405(b) for the fiscal year in which the initial payment was made.

■ 18. Section 534.406 is revised to read as follows:

§ 534.406 Conversion to the SES pay system.

(a) On the first day of the first applicable pay period beginning on or after January 1, 2004, agencies must convert an existing SES rate of basic pay for a senior executive to an SES rate of basic pay that is equal to the employee's rate of basic pay, plus any applicable locality-based comparability payment under 5 U.S.C. 5304 which the senior executive was receiving immediately before that date, except as provided in paragraph (b) of this section. The newly converted rate is the senior executive's SES rate of basic pay. An agency's establishment of an SES rate of basic pay for a senior executive under this paragraph is not considered a pay adjustment for the purpose of applying § 534.404(c).

(b) An SES member's rate of basic pay, plus any applicable locality-based comparability payment under 5 U.S.C. 5304 to which the employee was entitled on November 24, 2003, may not be reduced for 1 year after the first day of the first applicable pay period beginning on or after January 1, 2004. If an SES member's rate of basic pay, plus any applicable locality-based comparability payment under 5 U.S.C. 5304 to which the employee was entitled on November 23, 2003, is higher than the rate in effect immediately prior to the first day of the first applicable pay period beginning on or after January 1, 2004, the agency must use the higher rate for the purpose of converting SES members to the SES pay system.

(c) An SES member who is assigned to a position outside the 48 contiguous States and the District of Columbia to a position overseas or in Alaska, Hawaii, Guam or the Commonwealth of the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, or other U.S. territories and possessions as of the first day of the first applicable pay period beginning on or after January 1, 2004, will be converted to a new rate of basic pay that equals the senior executive's current rate of basic pay, plus the amount of locality pay authorized under 5 U.S.C. 5304 for the applicable locality pay area upon the employee's initial reassignment to a position in the 48 contiguous States or the District of Columbia. The adjustment will be prospective, not retroactive, and it will not be considered a pay adjustment for the purpose of applying § 534.404(c). If the senior executive's rate of basic pay did not exceed the rate for level III of the Executive Schedule while assigned to a position outside the 48 contiguous States or the District of Columbia, upon initial reassignment to a locality pay

area the senior executive's converted rate of basic pay may not exceed the rate for level III of the Executive Schedule. The newly converted rate is the senior executive's SES rate of basic pay.

(d) On the first day of the first applicable pay period beginning on or after January 1, 2004, a law enforcement officer (LEO), as defined in 5 CFR 531.301, who is a member of the SES will have his or her rate of basic pay, plus any applicable special geographic pay adjustment established for LEOs under section 404(a) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) to which he or she was entitled immediately before that date, converted to a new SES rate of basic pay. The newly converted rate is the senior executive's SES rate of basic pay, and any pay adjustments approved on or after January 11, 2004, must be computed based on the senior executive's converted rate of basic pay. Conversion to a new SES rate of basic pay is not considered a pay adjustment for the purpose of applying § 534.404(c).

■ 19. Section 534.407 is added to read as follows:

§ 534.407 Pay computation and aggregate compensation.

(a) Except as provided in paragraph (b) of this section, pay for members of the SES must be computed in accordance with 5 U.S.C. 5504(b).

(b) To determine the hourly rate of pay for members of the SES, divide the annual SES rate of basic pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent. To derive the biweekly rate, multiply the hourly rate by 80.

(c) Senior executives are subject to the applicable aggregate limitation on pay in 5 CFR part 530, subpart B.

■ 20. In newly redesignated § 534.408, in the last sentence of paragraph (b) remove the word ''subject'' and add in its place the word ''subpart.''

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

■ 21. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, 5755 and 5757; Pub. L. 107–273, 116 Stat. 1780; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp. p. 316.

Subpart C—Retention Allowances

■ 22. In § 575.306, paragraph (b) is revised to read as follows:

§ 575.306 Payment of retention allowance.

* * * * *

(b) The head of an agency may not authorize a retention allowance for an employee if or to the extent that such an allowance, when added to the employee's estimated aggregate compensation, as defined in 5 CFR 530.202, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the applicable aggregate limitation on pay under 5 CFR part 530, subpart B, at the end of the calendar year.

* * * * *

■ 23. In § 575.307, paragraph (a) is revised to read as follows:

§ 575.307 Reduction or termination of retention allowance.

(a) The agency must reduce or terminate the authorized amount of a retention allowance to the extent necessary to ensure that the employee's estimated aggregate compensation, as defined in 5 CFR 530.202, does not exceed the applicable aggregate limitation on pay under 5 CFR part 530, subpart B, at the end of the calendar year.

* * * * *

[FR Doc. 04–26728 Filed 12–1–04; 5:03 pm]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AH13

Tobacco Loan Program—Removal of Requirement That Producers of Burley and Flue Cured Tobacco Designate Sales Locations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the tobacco price support program to remove the requirement that flue-cured tobacco farmers designate the auction warehouses where they will sell their tobacco and that burley tobacco farmers designate all locations where they will sell their tobacco. Currently price support is available only at designated auction warehouses on eligible tobacco.

DATES: *Effective Date:* December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, (202) 720–2715 or *ann_wortham@wdc.usda.gov.* Tobacco Division (TD), Farm Service Agency, United States Department of Agriculture (USDA), STOP 0514, Room 5750–S, 1400 Independence Avenue, SW., Washington, DC 20250–0514.

SUPPLEMENTARY INFORMATION:

Background

The Farm Service Agency (FSA) published in the **Federal Register**, on June 22, 2004, (69 FR 34615) a proposed rule to rescind the price support eligibility provision that requires flue-cured and burley tobacco farmers to designate the locations where they will sell their tobacco. The proposed rule requested public comments, and the comment period ended on July 22, 2004. To the extent practicable, some comments that were received after that date were also considered.

Summary of Comments

FSA received 368 comments on the proposed rule. Two respondents asked that no change be made in the current designation requirement. This request was considered, however, weighing the requests to maintain the existing program against the prevalence of comments requesting elimination of the program, as was proposed, weigh heavily in favor of changing the current requirements.

Eighteen respondents asked that the designation program be eliminated entirely. Although FSA proposed rescinding the designation program in June when the Agency requested input from the public, the majority of the comments on the proposed rule did not favor total elimination of the program. In deference to the majority of the comments on the proposed rule, FSA will not entirely eliminate the designation program. Thus, the final rule still contains a limited designation requirement.

Three hundred and forty three comments suggested adjustments to the timing of the designation requirements. Of these, 101 respondents asked only that the waiting period for re-designation be reduced to five days or less, 13 respondents asked that the designation program proceed as it is currently outlined, 209 respondents asked that both designation and subsequent re-designation requirements be made more simple. Two hundred and twenty two of these same commentors requested that designations be made immediately effective, and that designations be suspended and not necessary after the first week of tobacco sales. These comments and suggestions are addressed below.

Twenty-five comments expressed concerns about the burley tobacco designation program. These respondents

asked that designations end on August 1 of the market year, followed by two re-designation periods at the beginning of October and November, and then immediately effective re-designations beginning on November 25. These comments requested no other changes to the current requirements. These comments were not adopted for the reasons discussed below.

The existing technology that the Agency uses for this program does not allow FSA to make designations immediately effective. Therefore, this suggestion will not be adopted.

On October 22, 2004, the Fair and Equitable Tobacco Reform Act of 2004 repealed the tobacco marketing quota and acreage allotment and price support programs effective for the 2005 and subsequent crop years. The designation program, part of these programs, will end with the close of the 2004 marketing year. Accordingly, this rule deletes the price support eligibility requirement that flue-cured and burley tobacco farmers designate the locations where they will sell their tobacco. The majority of the commentors wanted the designation program to remain unchanged through the first week of tobacco sales, a time period which has ended for both flue-cured and burley tobaccos. Rescinding the designation requirements effective December 3, 2004, will have the effect of complying with the majority of commentors' requests that designation and subsequent re-designation requirements not be necessary after the first week of sales. Tobacco producers will be able to sell their tobacco where they wish, without waiting for a designation to become effective through this final crop year of the tobacco quota and price support programs.

Executive Order 12372

This final rule is not subject to the provisions of Executive Order 12372, which require consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this proposed rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Unfunded Mandates

This rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local and tribal governments or the private sector. Therefore, this rule is not subject to sections 202 and 205 of the UMRA.

Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance to which this rule applies, are: 10.051—Commodity Loans and Loan Deficiency Payments.

Environmental Evaluation

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An environmental evaluation was completed and the action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 5501 *et seq.*), the information collection or recordkeeping requirements of 7 CFR part 1464 are approved by the Office of Management and Budget (OMB) under OMB control numbers 0560–0058 and 0560–0217. Also, section 642(b) of FETRA provides these regulations be promulgated without regard to the Paperwork Reduction Act, nor be subject to the normal requirement for a 60-day public comment period. Nonetheless, this action will reduce the information collected and the Agency's currently approved burden, thus, a new burden estimate will be submitted to OMB for approval.

List of Subjects in 7 CFR Part 1464

Price support programs, Tobacco, Warehouses.

■ Accordingly, 7 CFR part 1464 is amended as follows:

PART 1464—TOBACCO

■ 1. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Pub. L. 1087, 117 Stat. 11.

Subpart A—Tobacco Loan Program

■ 2. Amend 7 CFR 1464.2 by removing paragraph (b)(2) and redesignating paragraphs (b)(3), (b)(4) and (b)(5) as (b)(2), (b)(3), and (b)(4), respectively.

Signed at Washington, DC, on November 19, 2004.

James R. Little,

Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 04–26828 Filed 12–2–04; 2:26 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–48–AD; Amendment 39–13886; AD 2004–24–10]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–3 airplanes modified with A.M. Luton's Supplemental Type Certificate (STC) number SA3777NM. This AD requires you to inspect the wiring for the heating blankets on P_3 and P_Y pneumatic lines and the push-to-test function lights to ensure that they are wired to the correct schematic; replace the circuit breaker switch as applicable; and replace the flight manual supplement currently in use with Revision G, dated March 28, 2001 (incorporates Revision I of Sheet 1 of Drawing 20075, ''Electrical System Schematic,'' dated October 10, 2000). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. We are issuing this AD to detect and correct wiring installed in accordance with an incorrect drawing, which shows the pneumatic heating blankets to the P_3 and P_Y pneumatic lines wired in series with the indicator lights, rather than parallel. This can result in reduced

current for the heating blankets and loss of pneumatic line heating, which can lead to loss of engine power or reverse propeller overspeed governing protection and ultimately loss of control of the airplane.

DATES: This AD becomes effective on January 6, 2005.

As of January 6, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from A. M. Luton, 3025 Eldridge Avenue, Bellingham, WA 98225.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, Special Certification Branch; telephone: (425) 917–6507; facsimile: (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Transport Canada, which is the airworthiness authority for Canada, recently notified FAA that an unsafe condition may exist on all Bombardier, Inc. Model DHC–3 airplanes modified with an A.M. Luton Supplemental Type Certificate (STC) number SA3777NM. Transport Canada reports a drawing error on Revisions G and H of Sheet 1 of the Electrical System Schematic Drawing 20075, which shows the pneumatic heating blankets to the P_3 and P_Y pneumatic lines wired in series with the indicator lights, rather than parallel. This can result in severely reduced electrical energy going to the heating blankets with loss of pneumatic line heating, which can lead to loss of engine power or reverse propeller overspeed governing protection.

What is the potential impact if FAA took no action? Electrical installation using incorrect wiring configurations could result in the electrical energy being absorbed by the light bulbs with insufficient electrical energy for the heating blankets, which would allow ice to form in these lines due to condensation even though the indication lights show the lines being heated. This could result in loss of engine power or reverse propeller overspeed governing protection and lead to loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Bombardier, Inc. Model DHC–3 airplanes modified with A.M. Luton's Supplemental Type Certificate (STC) number SA3777NM. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 24, 2004 (69 FR 29477). The NPRM proposed to require you to inspect the wiring for the heating blankets on P_3 and P_Y pneumatic lines and the push-to-test function lights to ensure that they are wired to the correct schematic; replace the circuit breaker switch as applicable; and replace the flight manual supplement currently in use with Revision G, dated March 28, 2001 (incorporates Revision I of Sheet 1 of Drawing 20075, ''Electrical System Schematic,'' dated October 10, 2000).

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 32 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We have no way of determining the number of airplanes that may need the rewiring or circuit breaker switch replacement. We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour est. $65 per hour = $65	$100	$165	$5,280

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–48–AD'' in your request.

This rulemaking is promulgated under the authority in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, the FAA is charged with prescribing minimum standards required in the

interest of safety for the design of aircraft. This regulation is within the scope of that authority since it corrects an unsafe condition in the design of the aircraft caused by incorrect wiring configurations that could result in the electrical energy being absorbed by the light bulbs with insufficient electrical energy for the heating blankets, which would allow ice to form in these lines due to condensation even though the indication lights show the lines being heated.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–24–10 Bombardier, Inc.: Amendment 39–13886; Docket No. 2003–CE–48–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on January 6, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the Model DHC–3 airplanes, all serial numbers, that are:

(1) Modified with STC number SA3777NM; and

(2) Certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of a drawing error on Revisions G and H of Sheet 1 of Drawing 20075, Electrical System Schematic. The actions specified in this AD are intended to detect and correct wiring installed according to an incorrect drawing, which shows the pneumatic heating blankets to the P_3 and P_Y pneumatic lines wired in series with the indicator lights, rather than parallel. This can result in insufficient electrical energy for the heating blankets and loss of pneumatic heating, which can lead to loss of engine power or reverse propeller overspeed governing protection and ultimately loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the electrical wiring to the P_3 and P_Y engine pneumatic line heating blankets and the P_3 heater warning light to determine if they are wired in a parallel configuration. If they are not wired in a parallel configuration, they must be rewired.	Inspect within 4 months after January 6, 2005 (the effective date of this AD) or 300 hours time in service (TIS) after January 6, 2005 (the effective date of this AD), whichever occurs first. Rewire prior to further flight after the inspection.	Follow the procedures in the A.M. Luton Service Information Letter SIL–00–10–10, revision dated, March 22, 2001.
(2) Replace Flight Manual Supplement currently in use with Revision G, dated March 28, 2001. This flight manual revision corrects the drawing error on Revisions G and H of Sheet 1 of the Electrical System Schematic Drawing 20075 by incorporating Revision I of Sheet 1 of Drawing 20075, ''Electrical System Schematic,'' dated October 10, 2000. (i) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the flight manual replacement requirement of this AD. (ii) Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Replace within 4 months after January 6, 2005 (the effective date of this AD) or 300 hours TIS after January 6, 2005 (the effective date of this AD), whichever occurs first.	Follow the procedures in the A.M. Luton Service Information Letter SIL–00–10–10, revision dated, March 22, 2001.
(3) Inspect circuit breaker switch for heated engine pneumatic lines circuit. If an engine is installed that uses both P_3 and P_Y heated pneumatic lines, circuit breaker switch, Part Number (P/N) 20075–3 (5 amp), must be replaced with circuit breaker switch P/N 20075–59 (7.5 amp).	Inspect within 4 months after January 6, 2005 (the effective date of this AD), or 300 hours TIS after January 6, 2005 (the effective date of this AD), whichever occurs first. Replace prior to further flight after the inspection.	Follow the procedures in the A.M. Luton Service Information Letter SIL–00–10–10, revision dated, March 22, 2001.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Special Certifications Branch, Transport Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Richard Simonson, Aerospace Engineer, Special Certifications Branch, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055; telephone: 425–917–6507; facsimile: 816–917–6590.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in A.M. Luton Service Information Letter SIL–00–10–10, revision dated March 22, 2001. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from

A.M. Luton, 3025 Eldridge Ave., Bellingham, WA 98225. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Is There Other Information That Relates to This Subject?

(h) Airworthiness Directive CF–2002–38, dated August 29, 2002, and Service Information Letter SIL–00–10–10, revision dated March 22, 2001, also pertain to the subject of this AD.

Issued in Kansas City, Missouri, on November 23, 2004.

David A. Downey,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26421 Filed 12–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19601]

Amendment to Class D Airspace; Springfield/Chicopee, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class D airspace area at Springfield/Chicopee, Westover AFB, MA (KCEF) to revise the Airport Reference Point (ARP) and provide for adequate controlled airspace for those aircraft circling to land.

DATES: Effective 0901 UTC, January 20, 2005.

Comments for inclusion in the Rules Docket must be received on or before January 5, 2005.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2004–19601/Airspace Docket No. 04–ANE–33, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the department of Transportation NASSIF Building at the street address stated above.

An informal docket may also be examined during normal business hours at the office of the Eastern Flight Service Area, New England Region Office, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299. Call the Manager, Operations Support Branch, ANE–530, telephone (781) 238–7530; fax (781) 238–7596, to make prior arrangements for your visit.

FOR FURTHER INFORMATION CONTACT: Jon T. Harris, Eastern Flight Service Area, Operations Support Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7530 fax (781) 238–7596.

SUPPLEMENTARY INFORMATION: Westover AFB has competed a new airport survey and established a new Airport Reference Point (ARP). In addition, this action increases the class D airspace radius to provide additional controlled airspace for those aircraft using category E circling minima for instrument procedures. Class D airspace designations for airspace areas extending upward from the surface are published in paragraph 5000 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that support the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with State authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with issuing regulations to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it defines controlled airspace in the vicinity of the Westover AFB to ensure the safety of aircraft operating near that airport and the efficient use of that airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANE MA D Springfield/Chicopee, MA [Revised]

Springfield/Chicopee, Westover AFB, MA
(Lat. 42°11′38″ N, long. 72°32′05″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within 5.7-mile radius of Westover AFB. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA, on November 18, 2004.

William C. Yuknewicz,

Director of Operations, Eastern Flight Service Area.

[FR Doc. 04–26750 Filed 12–3–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16091; Airspace Docket No. 03–ACE–74]

RIN 2120–AA66

Establishment of Jet Route 187, and Revision of Jet Routes 180 and 181; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Jet Route 187 (J–187) from the Memphis, TN, Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC) to the Foristell, MO, VORTAC. This action also extends J–180 from the Little Rock, AR, VORTAC to the Foristell VORTAC, and realigns J–181 between the Neosho Very High Frequency Omni-directional Range/Distance Measuring Equipment (VOR/DME) and the BAYLI intersection. The FAA is taking this action to enhance the management of aircraft operations over the St. Louis, MO area.

EFFECTIVE DATE: 0901 UTC, March 17, 2005.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On April 15, 2004, the FAA published in the **Federal Register** a notice proposing to establish J–187, and revise J–180 and J–181 (69 FR 19963). As part of the National Airspace Redesign project, a review of aircraft operations has identified a need to revise the jet route structure over the St. Louis, MO area. The FAA believes that establishing J–187 and revising the existing J–180 and J–181 will enhance the management of aircraft operations destined for the Lambert-St. Louis International Airport and the Chicago O'Hare International Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA. No comments were received in response to the proposal.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) by establishing J–187, and revising J–180 and J–181 in the St. Louis, MO area. Specifically, this action establishes J–187 from the Memphis, TN, VORTAC to the Foristell, MO, VORTAC. This action also revises J–180 by extending it from the Little Rock, AR, VORTAC to the Foristell VORTAC and J–181 by realigning the segments between the Neosho VOR/DME and the BAYLI intersection. The FAA believes that this action will enhance the management of aircraft operations over the St. Louis, MO area.

Jet routes are published in paragraph 2004 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with Paragraph 311(a) of FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

The Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–180 [Revised]

From Humble, TX; Daisetta, TX; Sawmill, LA; Little Rock, AR; Foristell, MO.

J–181 [Revised]

From Ranger, TX; Okmulgee, OK; Neosho, MO; Hallsville, MO; INT Hallsville 053° and Bradford, IL, 219° radials; to Bradford.

* * * * *

J–187 [New]

From Memphis, TN; Foristell, MO.

* * * * *

Issued in Washington, DC, on November 29, 2004.

Reginald Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–26749 Filed 12–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. H040]

RIN 1218–0184

Methylenedianiline in Construction; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; correction.

SUMMARY: OSHA is revising the regulatory text of the Methylenedianiline (MDA) Standard for Construction to correct a cross reference to OSHA's standard on emergency action plans and fire prevention plans.

DATES: This final rule becomes effective January 5, 2005.

FOR FURTHER INFORMATION CONTACT: George Shaw, Acting Director, OSHA Office of Communication, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION: On November 2002, the Agency published a final rule entitled ''Exit Routes, Emergency Action Plans, and Fire Prevention Plans (67 FR 67949).'' This action was taken in part to clarify and make consistent provisions regrading emergency action plans and fire prevention plans in several general industry standards. In that final rule, OSHA separated the requirements for emergency action plans and fire protection plans into two separate sections, 1910.38 and 1910.39, respectively.

Several general industry health standards were revised at that time to reflect this change. The general industry standard for MDA (29 CFR 1910. 1050(d)(1)(iii)) was revised to read as follows: ''The plan shall specifically include provisions for alerting and evacuating affected employees as well as elements prescribed in 29 CFR 1910.38 and 29 CFR 1910.39, 'Emergency actions plans' and 'Fire prevention plans,' respectively.'' The same provision in the MDA Standard for Construction (29 CFR 1926.60) was not similarly revised at that time. Since the Agency intended to revise all health standards to reflect this change, OSHA is accordingly correcting the MDA Construction Standard to make it consistent with the revised language in the other health standards. In making this correction, OSHA maintains the safety and health protection provided to employees without increasing the regulatory burden on employers.

List of Subjects in 29 CFR Part 1926

Chemicals, Construction industry, Diving, Electric power, Fire prevention, Gases, Government Contracts, Hazardous substances. Health records, Lead, Motor vehicle safety, Noise control, Occupational safety and health, Radiation protection. Reporting and recordkeeping requirements, Signs and symbols.

■ Therefore, OSHA amends 29 CFR part 1926 as follows:

PART 1926—[CORRECTED]

Subpart D—Occupational Health and Environmental Controls

■ 1. The authority citation for part 1926 subpart D is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable, and 29 CFR part 1911.

■ 2. In § 1926.60, paragraph (e)(1)(iii) is revised to read as follows:

§ 1926.60 Methylenedianiline

(e) * * *

(1) * * *

(iii) The plan shall specifically include provisions for alerting and evacuating affected employees as well as the applicable elements prescribed in 29 CFR 1910.38 and 29 CFR 1910.39, ''Emergency action plans'' and ''Fire prevention plans,'' respectively.

* * * * *

Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, directed the preparation of this notice under the authority granted by: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); section 107 of the Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); section 41, the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2002 (67 FR 65008); and 29 CFR part 1911.

Signed at Washington, DC, this 18 day of November 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–26739 Filed 12–3–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–142]

Drawbridge Operation Regulations: Connecticut River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Old Saybrook-Old Lyme Bridge, mile 3.4, across the Connecticut River, Connecticut. This deviation from the regulations allows the bridge owner to require a twelve-hour advance notice for bridge openings between 6 p.m. and 6 a.m. from 10 p.m. on January 14, 2005 through 10 a.m. on February 14, 2005. This deviation is necessary in order to facilitate necessary inspection and repairs at the bridge.

DATES: This deviation is effective from January 14, 2005 through February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Old Saybrook-Old Lyme Bridge, at mile 3.4, across the Connecticut River has a vertical clearance in the closed position of 19 feet at mean high water and 22 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.205(b).

The owner of the bridge, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the drawbridge operating regulations to facilitate electrical maintenance repairs at the bridge.

This deviation to the operating regulations allows the bridge owner to require at least a twelve-hour advance notice for bridge openings at the Old Saybrook-Old Lyme Bridge between 6 p.m. and 6 a.m. from 10 p.m. on January 14, 2005 through 10 a.m. on February 14, 2005.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 22, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–26747 Filed 12–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–04–146]

RIN 1625–AA11

Regulated Navigation Area; San Carlos Bay, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area on the waters of San Carlos Bay, Florida. The regulated navigation area is needed to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span ''A'' (bascule portion) of the Sanibel Island Causeway Bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge. Vessels transiting the regulated navigation area must comply with all the regulations of the temporary section; however the Coast Guard may change this rule based on comments received.

DATES: This rule is effective from 11:59 p.m. on November 28, 2004 until 8 a.m. on November 28, 2005. Comments must be received by January 29, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–04–146 and are available for inspection or copying at the Seventh Coast Guard District Marine Safety Division, 8th Floor, 909 SE., 1st Ave., Miami, FL 33131–3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may send comments and related materials to Commander (M) Seventh Coast Guard District Marine Safety Division, 8th Floor, 909 SE. 1st Ave., Miami, FL 33131–3050.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Steven Lang, Project Officer, Seventh Coast Guard District, Marine Safety Branch at 305–415–6865.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Information concerning the unchanged condition of the Sanibel Island Bridge was not received until November 2, 2004. The Bridge continues to pose a safety hazard to vessel and vehicle traffic transiting the area. Therefore, publishing an NPRM and delaying its effective date would be contrary to the public interest because immediate action is needed to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span ''A'' (bascule portion) of the bridge and to enhance the safety of vessels transiting the area and vehicles crossing over the bridge. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restrictions.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Division, Seventh Coast Guard District, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–04–146), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Background and Purpose

On November 18, 2003, the Lee County Board of Commissioners issued an emergency declaration that present conditions of the Sanibel Island Causeway Bridge pose an immediate threat to the safety of the traveling public. Immediate initial action was required to minimize the risk of potential bridge allisions of vessels utilizing the main channel under span ''A'' (bascule portion) and enhance the safety of vessels transiting the area and vehicles crossing over the bridge. The Coast Guard established an RNA (68 FR 68518) in the vicinity of the bridge from November 29, 2003, through November 28, 2004.

On November 2, 2004, Sanibel County engineers reevaluated the Sanibel Island

Bridge. The condition of the bridge continues to pose a threat to the safety of the traveling public. The structural portions of the bridge have not been fully repaired due to mitigating circumstances. With recent hurricane storm activities the bridge fender system suffered severe damage delaying the project further.

The need for this regulated navigation area (RNA) is further demonstrated by the recent actions of a tug and barge unit that failed to comply with the then existing RNA (68 FR 68518) on November 13, 2004. In violation of the RNA, the tug and barge attempted to pass under the bridge during a strong outgoing current and allided with the bridge. This allision demonstrates the need for the RNA to ensure the safety of vessels and vehicles transiting the area.

Discussion of Rule

The regulated navigation area will encompass the main channel under the ''A'' span (bascule portion) of the Sanibel Island Causeway Bridge out to 100 feet on either side of the bridge inclusive of the main shipping channel. All vessels are required to transit the area at no-wake speed. However, nothing in this rule negates the requirement to operate at a safe speed as provided in the Navigation Rules and Regulations. A one-way traffic scheme is imposed within the regulated navigation area. Overtaking is prohibited. Tugs with barges must be arranged in a push-ahead configuration with barges made up in tandem. Tugs must be of adequate horsepower to fully maneuver the barges. Tug and barge traffic may transit the regulated navigation area at slack water only. Stern towing is prohibited except by assistance towing vessels, subject to certain conditions. Side towing is permitted. Assistance towing vessels may conduct stern tows when the disabled vessel being towed is less than or equal to 30 feet in length. For disabled vessels greater than 30 feet in length, assistance towing vessels may use a towing arrangement in which one assistance towing vessel is in the lead, towing the disabled vessel, and another assistance towing vessel is astern of the disabled vessel. Assistance towing vessels must be of adequate horsepower to maneuver the vessel under tow and may transit the RNA at slack water only. These regulations are going into effect to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span ''A'' (bascule portion) of the Sanibel Island Causeway Bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The Coast Guard bases this finding on the following: Vessels may still transit the area, the waterway is not a major commercial route, and the Coast Guard expects only modest delays due to the nature of the marine traffic that traditionally uses this waterway.

Additionally, the Coast Guard is soliciting comments to determine the impact on the boating public, and may make adjustments based on comments we receive.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit a portion of San Carlos Bay. This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels may still transit the area; the waterway is not a major commercial route, and the Coast Guard expects only modest delays due to the nature of the marine traffic that traditionally uses the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits in paragraph (34)(g) because it is a regulated navigation area. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064 Department of Homeland Security Delegation No. 0170.1.

■ 2. Temporarily add new section 165.T07–146 to read as follows:

§ 165.T07–146 Regulated Navigation Area, San Carlos Bay, Florida

(a) *Regulated Area.* The following area is a regulated navigation area (RNA): the waters bounded by the following points: NW Corner: 26°28′59″ N, 082°00′54″ W; NE Corner: 26°28′59″ N, 082°00′52″ W; SE Corner: 26°28′57″ N, 082°00′51″ W; SW Corner: 26°28′57″ N, 082°00′53″ W.

(b) *Regulations.*

(1) A vessel in the RNA established under paragraph (a) of this section will operate at no-wake speed. Nothing in this rule is to be construed as to negate the requirement to at all times operate at a safe speed as provided in the Navigation Rules and Regulations.

(2) A one-way traffic scheme is established. Vessel traffic may proceed in one direction at a time through the RNA. Overtaking is prohibited.

(3) Tugs with barges must be arranged in a push-ahead configuration with the barges made up in tandem. Tugs must be of adequate horsepower to maneuver the barges. Tug and barge traffic may transit the RNA at slack water only.

(4) Stern tows are prohibited except for assistance towing vessels, subject to conditions. Side tows are authorized. Assistance towing vessels may conduct stern tows of disabled vessels that are less than or equal to 30 feet in length. For vessels that are greater than 30 feet in length, assistance towing vessels may use a towing arrangement in which one assistance towing vessel is in the lead, towing the disabled vessel, and another assistance towing vessel is astern of the disabled vessel. All assistance towing vessels operating within the regulated navigation area must be of adequate horsepower to maneuver the vessel under tow and the transit must be at slack water only.

(c) *Definitions.* The following definitions apply to this section:

Assistance towing means assistance provided to disabled vessels.

Assistance towing vessels means commercially registered or documented vessels that have been specially equipped to provide commercial services in the marine assistance industry.

Disabled vessel means a vessel, which while being operated, has been rendered incapable of proceeding under its own power and is in need of assistance.

Overtaking means a vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the stern light of the vessel but neither of her sidelights.

Slack water means the state of a tidal current when its speed is near zero, especially the moment when a reversing current changes direction and its speed is zero. The term also is applied to the entire period of low speed near the time of turning of the current when it is too weak to be of any practical importance in navigation.

Vessel means every description of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on the water.

(d) *Violations.* Persons in violation of these regulations will be subject to civil penalty under 33 U.S.C. 1232 of this part, to include a maximum civil penalty of $32,500 per violation.

(e) *Effective period.* This section is effective from 11:59 p.m. on November 28, 2004, until 8 a.m. on November 28, 2005.

Dated: November 24, 2004.

David B. Peterman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 04–26748 Filed 12–3–04; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[PA 2004-2]

Inspection and Copying of Records

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; technical amendment.

SUMMARY: This document makes a non-substantive, technical amendment to a Copyright Office regulation.

DATES: This rule is effective January 5, 2005.

FOR FURTHER INFORMATION CONTACT: Sandra L. Jones, Writer–Editor, or Marilyn J. Kretsinger, Associate General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: This rule makes a technical amendment to 37 CFR 201 to remove the hours of direct public use of computers intended to access the automated equivalent of portions of the in–process files in the Records Maintenance Unit of the Copyright Office. New hours of 9:00 a.m. to 4:30 p.m. are being implemented; but for administrative reasons, the Office decided not to include the time schedule as part of the regulation.

The reason for the change is current staff resources. A very small staff, working on a fixed schedule of 8:30 a.m. to 5:00 p.m., covers this public area. Reducing the hours of public access, gives the staff needed time at the beginning and end of the day to open up and close down the area for the public. The new hours will both provide the staff with the time necessary to complete these tasks without working beyond their normal duty schedule and afford the public a sufficient amount of time to use the files.

List of Subjects in 37 CFR Part 201

Copyright.

Final Rule

■ For the reasons set forth in the preamble, 37 CFR part 201 is amended as follows:

PART 201–GENERAL PROVISIONS

■ 1. The authority citation for Part 201 continues to read as follows:

Authority: 17 U.S.C. 702

■ 2. Section 201.2(b)(2) is amended by removing ''8:30 a.m. to 5:00,''.

Dated: December 1, 2004

Marilyn J. Kretsinger,

Associate General Counsel.

[FR Doc. 04–26740 Filed 12–3–04; 8:45 am]

BILLING CODE 1410–30–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7857]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since

these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Maine: Kenduskeag, Town of, Penobscot County	230108	March 15, 1976, Emerg; September 18, 1985, Reg; December 2, 2004, Susp.	9/18/1985	12/02/2004.
Region IV				
Alabama: Randolph County, Unincorporated Areas	010182	November 5, 2003, Emerg; November 5, 2003, Reg; December 2, 2004, Susp.	.....do	do.
Roanoke, City of, Randolph County	010348	May 3, 1995, Emerg; May 3, 1995, Reg; December 2, 2004, Susp.	.....do	do.
Wadley, Town of, Randolph County	010183	July 15, 1975, Emerg; August 19, 1985, Reg; December 2, 2004, Susp.	.....do	do
Wedowee, Town of, Randolph County	010401	October 29, 1998, Emerg; October 29, 1998, Reg; December 2, 2004, Susp.	.....do	do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

David I. Maurstad,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–26695 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 27, 74, 90, and 101

[DA 04–2591; WT Docket No. 01–319; FCC 04–23]

Practice and Procedure, Miscellaneous Wireless Communications Services, Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services, Private Land Mobile Radio Services, Fixed Microwave Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of April 6, 2004, (69 FR 17946), a document in the Quiet Zones proceeding, WT Docket No. 01–319, which incorrectly indicated in its **DATES** section that 47 CFR 1.924(a)(2) and 1.924(d)(2) contained information collection modifications that have not been approved by the Office of Management Budget (OMB). This document corrects the **DATES** section of the April 6, 2004 document as set forth below.

DATES: Effective June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Linda C. Chang, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th St., Washington, DC 20554, (202) 418–0620.

SUPPLEMENTARY INFORMATION:

Background

The FCC published a document in the **Federal Register** of April 6, 2004, (69 FR 17946) regarding the adoption of changes to rules relating to areas known as ''Quiet Zones.'' In FR Doc. 04–7799, the document provided that the effective date of the document was June 7, 2004, except for 47 CFR 1.924(a)(2) and 1.924(d)(2) which were incorrectly identified as containing a new or modified information collection that required approval by OMB prior to becoming effective. Because 47 CFR 1.924(a)(2) and 1.924(d)(2) are not in fact subject to approval by OMB, the effective date of the April 6, 2004 document became effective, in its entirety, on June 7, 2004. This document corrects the document published in the **Federal Register** of April 6, 2004 (69 FR 17946) and September 23, 2004 (69 FR 56956) in the Quiet Zones proceeding, WT Docket No. 01–319 by correcting the **DATES** section.

Federal Communications Commission.

Linda C. Chang,

Associate Division Chief, Mobility Division.

[FR Doc. 04–26742 Filed 12–3–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AT59

Conferring Designated Port Status on Houston, TX; Louisville, KY; and Memphis, TN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, make Houston, Texas; Louisville, Kentucky; and Memphis, Tennessee, designated ports under section 9(f) of the Endangered Species Act of 1973 (ESA). This action will allow the direct importation and exportation of wildlife and wildlife products through these growing international ports. We are changing the regulations in 50 CFR part 14 to reflect this designation.

DATES: This rule is effective January 5, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during regular business hours at the Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement, 4501 North Fairfax Drive, Suite 3000, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Gregory Jackson, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement, at (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

The ESA requires that all fish and wildlife, with only limited exceptions, be imported and exported through designated ports. Designated ports facilitate U.S. efforts to monitor wildlife trade and enforce wildlife protection laws and regulations by funneling wildlife shipments through a limited number of locations. The Secretary of the Interior, with the approval of the Secretary of the Department of Homeland Security, designates ports for wildlife trade by regulation after holding a public hearing and collecting and considering public comments. Public hearings were conducted in Houston on June 10, 2004, in Memphis on July 1, 2004, and in Louisville on July 8, 2004. We published a proposed rule to designate the ports of Houston, Louisville, and Memphis, with a 30-day comment period, on April 22, 2004 (69 FR 21806).

The Service selects designated ports based upon numerous criteria, such as volume of wildlife shipments, geographic diversity, frequency of requests for designated port exception permits, and the proximity to existing ports of entry. The Service presently has 14 designated ports of entry for the importation and exportation of wildlife and wildlife products: Anchorage, Alaska; Atlanta, Georgia; Baltimore, Maryland; Boston, Massachusetts; Chicago, Illinois; Dallas/Fort Worth, Texas; Honolulu, Hawaii; Los Angeles, California; Miami, Florida; New Orleans, Louisiana; New York, New York; Portland, Oregon; San Francisco, California; and Seattle, Washington. The Service maintains a staff of wildlife inspectors at each designated port to inspect and clear wildlife shipments.

Regulatory exceptions allow certain types of wildlife shipments to enter or leave the country through ports that are not designated. Under certain conditions, importers and exporters can obtain a permit from the Service, called a designated port exception permit, that allows their use of non-designated ports. The importer or exporter will be responsible for additional fees associated with the designated port exception permit ($25) and the inspection of their wildlife shipment at a non-designated port.

Need for This Rulemaking

Existing and projected increases in air and express cargo, along with substantial growth in the number of airline passengers, international visitors, and hunters seeking clearance of wildlife imports and exports, justify the designation of the ports of Houston, Louisville, and Memphis. The designation of these ports will improve service, while reducing costs, for international air and ocean cargo and mail carriers, small businesses, and the public, while maintaining effective monitoring and regulation of the U.S. wildlife trade.

In the Fiscal Year 2004 budget appropriation for the Service's Office of Law Enforcement, monies were appropriated by Congress in the amount of $700,000 each for the purpose of establishing the designated ports of Louisville and Memphis. The Service has not received an appropriation from Congress to designate the port of Houston. However, the designation of Houston has been under discussion for some time. At present, the Service has three wildlife inspectors on duty in Houston, which fulfills the staffing requirement that the Service has established for a designated port in funding and staffing models. Therefore, the designation of Houston would amount to changing the status of an existing Service port and would not require start-up costs as would be the case in Louisville and Memphis.

Houston is one of the fastest growing ports of entry in the nation in both international airfreight and shipping. The three airports comprising the Houston Airport System handled 42,016,609 passengers and 330,701 tons of cargo in 2002. International air cargo tonnage at George Bush Intercontinental increased by more than 62 percent in the past 10 years with a 10 percent per year increase in the past 5 years. Houston is the primary air cargo gateway to and from Mexico, and the Houston sea port handles 81 steamship lines with 6,414 vessel calls, hauling 175,000,000 tons of cargo between Houston and 200 countries worldwide in 2002. The Port of Houston ranks first in the United States in tonnage imported, and third in tonnage exported. Houston also has an extensive designated Foreign Trade Zone.

Service records indicate that a wide variety of wildlife and wildlife products are imported and exported through Houston under designated port exception permits. These wildlife and wildlife products include game trophies, reptile leather goods, scientific and museum specimens, live tropical fish, and curios. The number of designated port exception permits issued for the port of Houston suggests that demand for the use of this port is high. In addition, the number of import/export licenses issued to companies in the State of Texas has nearly doubled since 2001. Doubtless, many of these companies are doing business in or near the Houston area and will benefit from the designation of this port.

Before this designation, the designated ports of entry for wildlife and wildlife products nearest to Houston were Dallas/Fort Worth, Texas (approximately 239 miles), and New Orleans, Louisiana (approximately 347 miles). In the 2003 Fiscal Year, 4,434 wildlife shipments were processed in Dallas/Forth Worth, and 659 wildlife shipments were processed in New Orleans. We estimate that a significant fraction of this volume will be shipped directly to Houston for Service inspection and clearance with its

designation, resulting in considerable savings in shipping time and costs. Before this designation, importations or exportations of wildlife or wildlife products arriving in Houston without Service clearance had to be either shipped in-bond, under U.S. Bureau of Customs and Border Protection (CBP) authority, to designated ports of entry for Service inspection and clearance, or had to be accompanied by a designated port exception permit that authorized Service inspection and clearance in Houston. Designated port exception permits for Houston have been issued on a regular basis since the Service does have three wildlife inspectors on duty at that location. However, either alternative creates delays and increased costs to businesses.

In Louisville, the presence of the United Parcel Service (UPS) hub at the Louisville International Airport makes Louisville the 6th largest handler of air cargo in the world. In 2002, UPS at Louisville handled 3,360,155,981 lbs. of air cargo in 3.5 million shipments, including approximately 665,000 CBP import entries. In addition, the port of Louisville had 34,354 CBP entries for other importations and waterborne cargo at the Louisville Container Freight Port separate from the UPS facility.

Before this designation, the designated ports of entry for wildlife and wildlife products nearest to Louisville were Chicago, Illinois (approximately 297 miles), and Atlanta, Georgia (approximately 421 miles). In the 2003 Fiscal Year, 5,434 wildlife shipments were processed in Chicago, and 2,020 wildlife shipments were processed in Atlanta. In addition, 11,800 wildlife shipments were processed in Anchorage, which is the Pacific rim first port of landing for UPS. We estimate that a significant fraction of this volume will be shipped directly to Louisville for Service inspection and clearance with its designation, resulting in considerable savings in shipping time and costs. Before this designation, importations or exportations of wildlife or wildlife products arriving in Louisville without Service clearance had to be shipped in-bond, under CBP authority, to designated ports of entry for Service inspection and clearance, thereby creating delays and increased costs to businesses. Designated port exception permits for Louisville have been issued on an extremely limited basis since the Service does not currently have staff at that location, and issuing these permits can only be done subject to the availability of Service staff from other ports to conduct inspections.

In Memphis, the presence of the Federal Express (FedEx) headquarters and Superhub makes Memphis International Airport the world's largest processor of international airfreight, handling 2.63 million metric tons in 2001, more than Los Angeles or Hong Kong. FedEx's global network spans over 210 countries, and 121,000 international shipments pass through the Memphis hub each day. More than 130 foreign-owned firms from 22 countries employing over 17,000 workers have relocated to Memphis in the past 20 years. In addition, Memphis is home to both rail and waterborne freight imports and exports, with a CBP port of entry for such cargo. In 2001, the International Port of Memphis handled 16,907,000 tons of cargo. Memphis is served by five Class 1 railroads, which operate approximately 220 freight trains daily through the city.

Before this designation, the designated ports of entry for wildlife and wildlife products nearest to Memphis were New Orleans, Louisiana (approximately 402 miles), Dallas, Texas (approximately 452 miles), and Atlanta, Georgia (approximately 463 miles). In the 2003 Fiscal Year, 659 wildlife shipments were processed in New Orleans, 4,434 wildlife shipments were processed in Dallas, and 2,020 wildlife shipments were processed in Atlanta. In addition, 11,800 wildlife shipments were processed in Anchorage, which is the Pacific rim first port of landing for FedEx. We estimate that a significant percentage of this volume will be shipped directly to Memphis for Service inspection and clearance with its designation, resulting in considerable savings in shipping time and costs. Before this designation, importations or exportations of wildlife or wildlife products arriving in Memphis without Service clearance had to be shipped in-bond, under CBP authority, to designated ports of entry for Service inspection and clearance, thereby creating delays and increased costs to businesses. Designated port exception permits for Memphis have been issued on an extremely limited basis since the Service has only one special agent at that location whose responsibilities extend far beyond the port. While there are 18 CBP inspectors and 10 U.S. Department of Agriculture Inspectors in Memphis, the absence of Service inspectors has increased the likelihood that illegal wildlife shipments have been imported or exported through Memphis, impacting both the United States' ability to fulfill treaty obligations under the Convention on International Trade in Endangered Species (CITES) and creating an avenue for the introduction of injurious or invasive species into the nation. Prior to September 11, 2001, CBP inspectors in Memphis initiated about 156 wildlife-related seizures per year, mostly consisting of reptile leather goods. The single Service agent stationed in Memphis is responsible for criminal investigations in all of West Tennessee and, therefore, has had very little time to devote to import/export matters. However, by spending minimal time at the FedEx air facility, he has routinely made about 40 seizures of illegally imported wildlife or wildlife products annually. Designated port status for Memphis will expedite the processing of wildlife shipments, which is financially advantageous for Memphis' and the region's carriers, importers, and exporters, while interdicting the illegal international import and export trade in wildlife and wildlife products.

In summary, the Service makes Houston, Louisville, and Memphis designated ports under section 9(f) of the ESA. The justification for this designation is based primarily on past and projected increases in the import and export of wildlife or wildlife products through these ports. The result of this designation will be to ease the financial and administrative burden on companies and individuals seeking to import or export wildlife or wildlife products through the ports of Houston, Louisville, and Memphis. With this final rule, the list of designated ports is now alphabetized by city name.

Summary of Public Comments Received

In response to our proposed rule to designate the ports of Houston, Louisville, and Memphis, published on April 22, 2004 (69 FR 21806), we received a total of 35 comments. All of these comments supported the designation of Houston, Louisville, and Memphis. In addition, we received three written comments at our hearing in Houston, and one written comment at our hearing in Louisville. All of these comments supported the designation of these ports.

Required Determinations

Executive Order 12866 (Regulatory Planning and Review)

This rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Under the criteria in Executive Order 12866, this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-

benefit and economic analysis is not required.

The purpose of this rule is to confer designated port status on Houston, Louisville, and Memphis. Changing the status of these ports will have very little or no adverse effect on the economic sector, productivity, jobs, or the environment, or other units of government. This rule is intended to decrease the administrative and financial burden on wildlife importers and exporters by allowing them to use the ports of Houston, Louisville, and Memphis for all varieties of wildlife shipments. This rule provides a significant benefit to those businesses that import or export wildlife or wildlife products by allowing the inspection of shipments in Houston, Louisville, and Memphis, and will result in a savings for the importer or exporter in both time and the expense of shipping to a designated port for Service inspection and clearance.

b. This rule will not create inconsistencies with other agencies' actions.

The Service is the lead agency regulating wildlife trade through the declaration process, the issuance of permits to conduct activities affecting wildlife and their habitats, and carrying out the United States' obligations under CITES. Therefore, this rule has no effect on other agencies' responsibilities and will not create inconsistencies with other agencies' actions.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. This rule will, however, affect user fees. User fees will be decreased or cancelled depending on whether the import or export of wildlife or wildlife products is for commercial purposes. For example, when we establish Houston, which is currently staffed with three wildlife inspectors, as a designated port, commercial importers and exporters will save a minimum of $40 per shipment and noncommercial importers and exporters will save a minimum of $95 per shipment. When we establish Memphis and Louisville, which are not currently staffed with wildlife inspectors, as designated ports, commercial importers and exporters will save all costs associated with inspections and clearance, such as travel, salary, and per diem, and noncommercial importers and exporters will save the $55 administrative fee plus all costs associated with inspections and clearance. In addition, when we establish Houston, Louisville, and Memphis as designated ports, all importers and exporters will save the $25 designated port exception permit fee.

d. This rule will not raise novel legal or policy issues.

This rule will not raise novel legal or policy issues because it is based upon specific language in the ESA and the Code of Federal Regulations, which has been applied numerous times to various ports around the country.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. In addition, a Small Entity Compliance Guide is not required.

Most of the businesses that engage in commerce by importing or exporting wildlife or wildlife products would be considered small businesses as defined under the Regulatory Flexibility Act. This rule is intended to ease the financial and administrative burden on companies and individuals seeking to import or export wildlife or wildlife products through the ports of Houston, Louisville, and Memphis. This burden will be eased through the reduction or elimination of user fees, and the elimination of the need for designated port exception permits. In addition, the designation of these ports will provide small entities with opportunities for additional brokerage, freight forwarding, and related services to accommodate the increased volume of imports and exports of wildlife and wildlife products through these ports. These businesses would be considered by the Small Business Administration (SBA) as ''All Other Support Activities for Transportation,'' with an SBA size standard of $6 million in average annual receipts.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

a. This rule does not have an annual effect on the economy of $100 million or more.

This rule will not increase costs for small entities. Before this designation, a shipper who requested Service clearance at Houston, Louisville, or Memphis had to have the shipment continue under CBP bond to a designated port. With the designation of Houston, Louisville, and Memphis, the elimination of costs associated with shipping under CBP bond to a designated port will amount to a substantial savings for importers and exporters of wildlife or wildlife products. In addition, the designation of these ports will provide small entities with opportunities for additional brokerage, freight forwarding, and related services to accommodate the increased volume of imports and exports of wildlife and wildlife products through these ports.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

This rule is intended to ease the financial and administrative burden on companies and individuals seeking to import or export wildlife or wildlife products through the ports of Houston, Louisville, and Memphis, thereby decreasing costs or prices for consumers or individual businesses.

c. This rule does not have significant negative effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies.

This rule is intended to ease the financial and administrative burden on companies and individuals seeking to import or export wildlife or wildlife products through the ports of Houston, Louisville, and Memphis, thereby promoting competition, employment, and investment, and increasing the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule, as proposed, will not ''significantly or uniquely'' affect small governments.

a. This rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

We are the lead agency for carrying out regulations that govern and monitor the importation and exportation of wildlife and wildlife products. Therefore this rule has no effect on small government's responsibilities.

b. This rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of $100 million or greater in any year, so it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

This rule will not result in any combined expenditure by State, local, or tribal governments.

Executive Order 12630 (Takings)

Under Executive Order 12630, this rule does not have significant takings implications. Under Executive Order 12630, this rule does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required. The purpose of this rule is to confer designated port status on the ports of Houston, Louisville, and Memphis. The result will be easing the financial and administrative burden on the public by eliminating the need for non-designated port permits, and decreasing or eliminating the administrative fees associated with shipment inspections. Therefore, this rule does not have significant takings implications.

Executive Order 13132 (Federalism)

Under Executive Order 13132, this rule does not have significant Federalism effects. A Federalism evaluation is not required. This rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988 (Civil Justice Reform)

Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not overly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This rule has been analyzed under the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). This rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This rule is categorically excluded from further National Environmental Policy Act requirements, under part 516 of the Departmental Manual, Chapter 2, Appendix 1.10.

Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)

Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. Individual tribal members are subject to the same regulatory requirements as other individuals who engage in the import and export of wildlife or wildlife products.

Executive Order 13211 (Energy Supply, Distribution, or Use)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The purpose of this rule is to confer designated port status on the ports of Houston, Louisville, and Memphis. This rule is not a significant regulatory action under Executive Order 12866 and it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Endangered Species Act

A determination has been made under section 7 of the ESA that the revision of part 14 will not affect federally listed species.

Author

The originator of this rule is Mark Phillips, Office of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects in 50 CFR Part 14

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

■ For the reasons described above, we amend part 14, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

■ 1. The authority citation for part 14 continues to read as follows:

Authority: 16 U.S.C. 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 9701.

■ 2. Revise § 14.12 to read as follows:

§ 14.12 Designated ports.

The following ports of entry are designated for the importation and exportation of wildlife and wildlife products and are referred to hereafter as ''designated ports'':

(a) Anchorage, Alaska.
(b) Atlanta, Georgia.
(c) Baltimore, Maryland.
(d) Boston, Massachusetts.
(e) Chicago, Illinois.
(f) Dallas/Fort Worth, Texas.
(g) Honolulu, Hawaii.
(h) Houston, Texas.
(i) Los Angeles, California.
(j) Louisville, Kentucky.
(k) Memphis, Tennessee.
(l) Miami, Florida.
(m) New Orleans, Louisiana.
(n) New York, New York.
(o) Portland, Oregon.
(p) San Francisco, California.
(q) Seattle, Washington.

Dated: November 29, 2004.

David P. Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–26717 Filed 12–3–04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT65

Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: We, the Fish and Wildlife Service (Service), as required by regulation, hereby provide notice of the termination of the emergency

establishment of the Pine Island-Estero Bay Refuge, which was effective upon publication of a rule in the **Federal Register** on August 6, 2004, until December 6, 2004. We also published a proposed rule to establish these areas as the Pine Island-Estero Bay Manatee Refuge by standard rulemaking procedures on August 6, 2004. Due to delays caused by recent hurricanes in Florida (*i.e.*, Charley, Frances, and Jeanne) and in order to provide for continued protection of this area during the rulemaking process, while allowing adequate time for public hearings and comments on the proposed designation, we are hereby using our emergency authority to re-establish the temporary Pine Island-Estero Bay Refuge, effective December 6, 2004. The area established by this rule will be a manatee refuge, and watercraft will be required to proceed at either ''slow speed'' or at not more than 25 miles per hour, on an annual or seasonal basis, as marked. While adjacent property owners must comply with the speed restrictions, the designation will not preclude ingress and egress to private property. This action is authorized under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), based on our determination that there is substantial evidence of imminent danger of taking one or more manatees and the emergency designation of a manatee refuge is necessary to prevent such taking. In evaluating the need for emergency designation of this manatee protection area, we considered the biological needs of the manatee, the level of take at these sites, and the likelihood of additional take of manatees due to human activity. We anticipate making a final determination on these sites in a final rule within the 120-day effective period of this emergency designation, unless State or local governments implement measures at these sites that would, in our view, make such establishment unnecessary to prevent the taking of one or more manatees.

DATES: In accordance with 50 CFR 17.106, the effective date for this action will be December 6, 2004, which will also be the date of publication in the following newspapers: Fort Myers News-Press; Cape Coral Daily Breeze; and, Naples Daily News. This emergency action will remain in effect for 120 days after publication in the **Federal Register** (through April 5, 2005).

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the South Florida ES Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960.

FOR FURTHER INFORMATION CONTACT: Jay Slack (*see* **ADDRESSES** section), telephone (772) 562–3909.

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee (*Trichecus manatus*) is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and is further protected under the MMPA (16 U.S.C. 1361–1407). Manatees reside in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in waters of the State of Florida throughout the year, and nearly all manatees winter in peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20 °Celsius (68 °Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from natural springs and industrial discharges for warmth. In warmer months, they expand their range and are occasionally seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA.

Human activities, and particularly waterborne activities, can result in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined by section 3(18) of the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased as a function of residential growth and increased visitation. This increased use is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has also increased. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waters. In 2003, 743,243 vessels were registered in the State of Florida. This represents an increase of 26 percent since 1993.

The large increase in human use of manatee habitat has had direct and indirect impacts on this endangered species. Direct impacts include injuries and deaths from watercraft collisions, deaths and injuries from water control structure operations, lethal and sublethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, including decreases in water quality throughout some aquatic habitats, decreases in the quantity of warm water

in natural spring areas, the spread of marine debris, and general disturbance from human activities.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, taking by harassment. A manatee sanctuary, as defined in 50 CFR 17.102, is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Reasons for Emergency Determination

In deciding to implement this emergency rule, we assessed the effects of a recent State court ruling overturning critically important, State-designated manatee protection zones in Lee County. In this case, (*State of Florida Fish and Wildlife Conservation Commission (FFWCC)* v. *William D. Wilkinson, Robert W. Watson, David K. Taylor, James L. Frock (2 Cases), Jason L. Fluharty, Kenneth L. Kretsh, Harold Stevens, Richard L. Eyler, and John D. Mills),* boaters, who were issued citations for alleged different violations of Rule 68C–22.005 (Rule), challenged the Rule adopted by the FFWCC regulating the operation and speed of motorboat traffic in Lee County waters to protect manatees. In its ruling the court determined that under Florida law the FFWCC can regulate the operation and speed of motorboats in order to protect manatees from harmful collisions with motorboats, however: (1) In the area to be regulated, manatee sightings must be frequent and, based upon available scientific information, it has been determined that manatees inhabit the area on a regular, periodic, or continuous basis; and (2) when the FFWCC adopts rules, it must consider the rights of boaters, fishermen, and water-skiers, and the restrictions adopted by the FFWCC must not unduly interfere with those rights. In this instance the court found that the Rule for four of the regulated areas did not meet the State standard for the frequency of sightings and the rule unduly interfered with the rights of voters. Thus, the designated manatee protection zones were invalidated, and the citations were dismissed.

The legal basis for the action to be taken by the Service differs markedly from that in the *FFWCC* v. *Wilkinson* case. The Service's action is not based on State law but rather is based upon a Federal regulation, 50 CFR 17.106(a), which provides the standard for an emergency designation of a protected area. Specifically, this regulation provides that a manatee protection area may be established ''* * * at any time [the Director] determines there is substantial evidence that there is imminent danger of a taking of one or more manatees, and that such establishment is necessary to prevent such a taking.''

We also reviewed the best available information to evaluate manatee and human interactions in these areas. Manatees are especially vulnerable to fast-moving power boats. The slower a boat is traveling, the more time a manatee has to avoid the vessel and the more time the boat operator has to detect and avoid the manatee. Nowacek *et al.* (2000) documented manatee avoidance of approaching boats. Wells *et al.* (1999) confirmed that, at a response distance of 20 meters, a manatee's time to respond to an oncoming vessel increased by at least 5 seconds if the vessel was traveling at slow speed. Therefore, the potential for take of manatees can be greatly reduced if boats are required to travel at slow speed in areas where manatees can be expected to occur.

The waterbodies encompassed in this emergency designation receive extensive manatee use either on a seasonal or year-round basis as documented in radio telemetry and aerial survey data (FWC, also abbreviated as FFWCC, 2003). The areas contain feeding habitats and serve as travel corridors for manatees (FWC 2003). They have also been regulated at either slow speed or with a 25-mile-per-hour speed limit by State government since 1999, prior to the State court ruling in *FFWCC* v. *William D. Wilkinson et al.* in December, 2003. Without this emergency Federal designation, watercraft can be expected to travel at high speeds in areas frequented by manatees, which would result in the take of one or more manatees. In fact, boat operators could inadvertently be encouraged to travel at high speeds. While the State court invalidated speed limits in the areas adjacent to navigation channels, it did not invalidate the 25-mile-per-hour speed limit in the navigation channels that traverse the affected area. Therefore, the speed limit in the navigation channel is now lower than that of the surrounding, shallower areas. As a result, shallow-draft high-speed boats capable of traveling outside the navigation channels can be expected to be operated at high speeds (greater than 25 miles per hour) in the areas more likely to be frequented by manatees.

There is a history of manatee mortalities in the area as a result of collisions with watercraft. At least 18 carcasses of manatees killed in collisions with watercraft have been recovered in or immediately adjacent to the designated areas since 1999 (*http://www.floridamarine.org,* 2004), with 4 carcasses recently recovered in close proximity to the sites following the State court action. Necropsies revealed that these animals died of wounds received from boat collisions. On August 6, 2004, we published a proposed rule to establish the Pine Island-Estero Bay Manatee Refuge as a permanent manatee protection area by normal rulemaking procedures (69 FR 48102). Three hurricanes that occurred over this region of peninsular Florida during August through October have resulted in the need for us to reschedule the public hearing and extend the public comment period for the proposed rule (appearing in a separate FR notice). However, the current emergency refuge is temporary and will expire on December 6, 2004, prior to the closing of the public review and comment period on the proposed rule. Without the emergency designation, these areas would not receive the needed protection because of the time necessary to complete the normal rulemaking process in light of the recent natural disasters.

For these reasons, we believe that there is imminent danger of take of one or more manatees in these areas and emergency designation of a manatee refuge is necessary to prevent such taking. Manatees utilize these areas, there is a history of take at these sites, future take is imminent, protection measures are insufficient, and we do not anticipate any alternative protection measures being enacted by State or local

government in sufficient time to reduce the likelihood of take occurring.

Effective Date

We are making this rule effective upon publication. In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553(d)(3) to make this rule effective sooner than 30 days after publication in the **Federal Register**. As discussed under ''Reasons for Emergency Determination,'' the emergency manatee refuge established August 6, 2004, is temporary, lasting only through December 6, 2004. Since the standard rulemaking process for creating a permanent refuge here could not be completed before expiration of the emergency refuge, re-establishment of the emergency manatee protection area must be effective December 6, 2004, in order to prevent a lapse in protection. Any further delay in making this manatee refuge effective would result in further risks of manatee mortality, injury, and harassment during the period of delay. In view of the finding of substantial evidence that taking of manatees is imminent and in fact has already occurred in or in close proximity to the site, we believe good cause exists to make this rule effective December 6, 2004. For the same reasons, we also believe that we have good cause under 5 U.S.C. 553(b)(3)(B) to issue this rule without prior notice and public procedure. We believe such emergency action is in the public interest because of the imminent threat to manatees and the additional time required to complete the standard rulemaking process, as the result of the hurricanes that recently hit Florida. The lack of emergency action would probably result in additional take of manatees. This rule does not supersede any more stringent State or local regulations.

Future Federal Actions

Once this emergency rule is in effect, the emergency designation is temporary and applies to these areas for only 120 days. We believe the danger to manatees due to watercraft collisions in the Pine Island-Estero Bay area is not only imminent, but also ongoing and year-round. Accordingly, we are proceeding with the normal rulemaking process to establish an additional manatee protection area in Lee County, Florida, in accordance with 50 CFR 17.103. As part of this process, we published a proposed rule in the **Federal Register** on August 6, 2004 (69 FR 48102). We anticipate publishing a final rule prior to the date that this emergency rule expires.

Definitions

''Planing'' means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

''Slow speed'' means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is not proceeding at slow speed if it is: (1) On a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *is* proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.

''Wake'' means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

''Water vehicle, watercraft,'' and ''vessel'' include, but are not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, across, or underneath the surface of the water.

Area Designated as a Manatee Refuge by Emergency Rule

Pine Island-Estero Bay Manatee Refuge

The Pine Island-Estero Bay Manatee Refuge encompasses water bodies in Lee County including portions of Matlacha Pass and San Carlos Bay south of Green Channel Marker ''77'' and north of the Intracoastal Waterway, portions of Pine Island Sound in the vicinity of York and Chino Islands, portions of Punta Rassa Cove and Shell Creek in San Carlos Bay and the mouth of the Caloosahatchee River, and portions of Estero Bay and associated water bodies. These water bodies are designated, as posted, as either slow speed or with a speed limit of 25 miles per hour, on either a seasonal or annual basis. Legal descriptions and maps are provided in the ''Regulation Promulgation'' section of this notice.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this emergency rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the emergency rule clearly stated? (2) Does the emergency rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the emergency rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the emergency rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the emergency rule easier to understand?

Send a copy of any comments that affect how we could make this emergency rule easier to understand to: Office of Regulatory Affairs; Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. Based on experience with similar rulemakings in this area, this rule will not have an annual economic impact of over $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. It is not expected that any significant economic impacts would result from the establishment of a manatee refuge (approximately 30 river miles) in Lee County in the State of Florida.

The purpose of this rule is to establish an emergency manatee refuge in Lee County, Florida. We are preventing the take of manatees by controlling certain human activity in this County. For the manatee refuge, the areas are year-round or seasonal slow speed, or year-round or seasonal speed limits of 25 miles per hour. Affected waterborne activities include, but are not limited to, transiting, cruising, water skiing, fishing, marine construction, and the use of all water vehicles. This rule will impact recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We will experience increased administrative costs due to this rule.

Conversely, the rule may also produce economic benefits for some parties as a result of increased manatee protection and decreased boat speeds in the manatee refuge areas.

Regulatory impact analysis requires the comparison of expected costs and benefits of the rule against a ''baseline,'' which typically reflects the regulatory requirements in existence prior to the rulemaking. For purposes of this analysis, the baseline assumes that the Pine Island-Estero Bay area has no regulating speed limits other than the 25 miles per hour in the navigation channels. The State-designated speed zones, other than in the navigation channels, have been lifted by a State Court decision. However, residents and other water users have lived with speed restrictions in this area for many years and have established business and recreational patterns on the water to accommodate their needs and desires for water-based recreation. Even though the baseline is set at no speed zones, the actual economic effects may very well be insignificant for this 120-day emergency rule because almost all users have been previously subject to these restrictions via State regulations and two previous Federal emergency rules. Thus, the rule is expected to have only an incremental effect. As discussed below, the net economic impact is not expected to be significant, but cannot be monetized given available information.

The economic impacts of this rule would be due to the changes in speed zone restrictions in the manatee refuge areas. These speed zone changes are summarized in the emergency rule.

In addition to speed zone changes, the rule no longer allows for the speed zone exemption process in place under State regulations. Florida's Manatee Sanctuary Act allows the State to provide exemptions from speed zone requirements for certain commercial activities, including fishing and events such as high-speed boat races. Under State law, commercial fishermen and professional fishing guides can apply for permits granting exemption from speed zone requirements in certain counties. Speed zone exemptions were issued to 27 permit holders in the former State zones that comprise the proposed manatee refuge area. One permit holder from previous years did not renew at the last opportunity.

In order to gauge the economic effect of this rule, both benefits and costs must be considered. Potential economic benefits related to this rule include increased manatee protection and tourism related to manatee viewing, increased fisheries health, and decreased seawall maintenance costs. Potential economic costs are related to increased administrative activities related to implementing the rule and affected waterborne activities. Economic costs are measured primarily by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. In addition, the rule may have some impact on commercial fishing because of the need to maintain slower speeds in some areas. The extension of slower speed zones in this rule is not expected to affect enough waterborne activity to create a significant economic impact (*i.e.*, an annual impact of over $100 million).

Economic Benefits

We believe that the designation of the Pine Island-Estero Bay Manatee Refuge in this rule will increase the level of manatee protection in these areas. A potential economic benefit is increased tourism resulting from an increase in manatee protection. To the extent that some portion of Florida's tourism is due to the existence of the manatee in Florida waters, the protection provided by this rule may result in an economic benefit to the tourism industry. We are not able to make an estimate of this benefit given available information.

In addition, due to reductions in boat wake associated with speed zones, property owners may experience some economic benefits related to decreased expenditures for maintenance and repair of shoreline stabilization structures (*i.e.*, seawalls along the water's edge). Speed reductions may also result in increased boater safety. Another potential benefit of slower speeds is that fisheries in these areas may be more productive because of reduced disturbance. These types of benefits cannot be quantified with available information.

Based on previous studies, we believe that this rule produces some economic benefits. However, given the lack of information available for estimating these benefits, the magnitude of these benefits is unknown.

Economic Costs

The economic impact from the designation of a manatee protection area affects boaters in these areas, in that boats are required to go slower than under current conditions. Some impacts may be felt by recreationists who have to use alternative sites for their activity or who have a reduced quality of the waterborne activity experience at the designated sites because of the rule. For example, the extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. Other impacts of the rule may be felt by commercial charter boat outfits, commercial fishermen, and agencies that perform administrative activities related to implementing the rule.

Affected Recreational Activities

For some boating recreationists, the inconvenience and extra time required to cross additional slow speed areas may reduce the quality of the waterborne activity or cause them to forgo the activity. This will manifest in a loss of consumer surplus to these recreationists. In addition, to the extent that recreationists forgo recreational activities, this could result in some regional economic impact. In this section, we examine the waterborne activities taking place in each area and the extent to which they may be affected by designation of the manatee refuges. The resulting potential economic impacts are discussed below. These impacts cannot be quantified because the number of recreationists and anglers using the designated sites is not known.

Recreationists engaging in cruising, fishing, and waterskiing may experience some inconvenience by having to go slower or use undesignated areas; however, the extension of slow speed zones is not likely to result in a significant economic impact.

Currently, not enough data are available to estimate the loss in consumer surplus that water skiers will experience. While some may use substitute sites, others may forgo the activity. The economic impact associated with these changes on demand for goods and services is not known. However, given the number of recreationists potentially affected, and the fact that alternative sites are available, it is not expected to amount to a significant economic impact. Until recently, speed zones were in place in this area and recreationists have adjusted their activities to accommodate them. It is not expected that, for a 120-day emergency rule, there would be a significant loss in consumer surplus from this activity.

Affected Commercial Charter Boat Activities

Various types of charter boats use the waterways in the affected counties, primarily for fishing and nature tours. The number of charter boats using the Pine Island-Estero Bay areas is currently unknown. For nature tours, the extension of slow speed zones is unlikely to cause a significant impact, because these boats are likely traveling at slow speeds. The extra time required

for commercial charter boats to reach fishing grounds could reduce onsite fishing time and could result in fewer trips. The fishing activity is likely occurring at a slow speed and will not be affected. Added travel time may affect the length of a trip, which could result in fewer trips overall, creating an economic impact.

Affected Commercial Fishing Activities

Several commercial fisheries will experience some impact due to the regulation. To the extent that the regulation establishes additional speed zones in commercial fishing areas, this will increase the time spent on the fishing activity, affecting the efficiency of commercial fishing. While limited data are available to address the size of the commercial fishing industry in the manatee refuges, county-level data generally provide an upper bound estimate of the size of the industry and potential economic impact.

Given available data, the impact on the commercial fishing industry of extending slow speed zones in the Pine Island-Estero Bay area cannot be quantified. The designation will likely affect commercial fishermen by way of added travel time, which can result in an economic impact. Some of the 27 active permit holders with speed limit exemptions are commercial fishermen. However, because the manatee refuge designation will not prohibit any commercial fishing activity, and because there is a channel available for boats to travel up to 25 miles per hour in the affected areas, the Service believes that it is unlikely that the rule will result in a significant economic impact on the commercial fishing industry. It is important to note that, in 2001, the total annual value of potentially affected fisheries was approximately $8.3 million (2001$); this figure represents the economic impact on commercial fisheries in these counties in the unlikely event that the fisheries would be entirely shut down, which is not the situation associated with this rule.

Agency Administrative Costs

The cost of implementing the rule has been estimated based on historical expenditures by the Service for manatee refuges and sanctuaries established previously. Since temporary signage is still in place from the previous emergency refuge in this location, and is still appropriate, we anticipate little or no additional costs for re-establishment of a 120-day manatee refuge here. The Service will likely spend additional funds for enforcement at the manatee refuge for 120 days. These costs cannot be accurately estimated at this time. The costs of enforcement may include hiring and training new law enforcement agents and special agents, and the associated training, equipment, upkeep, and clerical support (Service 2003b). Finally, there are some costs for education and outreach to inform the public about this manatee refuge area.

While the State of Florida has 12,000 miles of rivers and 3 million acres of lakes, this rule will affect approximately 30 river miles. The speed restrictions in this rule will cause inconvenience due to added travel time for recreationists and commercial charter boats and fishermen. As a result, the rule will impact the quality of waterborne activity experiences for some recreationists, and may lead some recreationists to forgo the activity. This rule does not prohibit recreationists from participating in any activities. Alternative sites are available for all waterborne activities that may be affected by this rule. The distance that recreationists may have to travel to reach an undesignated area varies. The regulation will likely impact some portion of the charter boat and commercial fishing industries in these areas as well. The inconvenience of having to go somewhat slower in some areas may result in changes to commercial and recreational behavior, resulting in some regional economic impacts. Given available information, the net economic impact of designating the manatee refuge is not expected to be significant (*i.e.*, an annual economic impact of over $100 million). While the level of economic benefits that may be attributable to the manatee refuge is unknown, these benefits would cause a reduction in the economic impact of the rule.

b. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are designating the Pine Island-Estero Bay area, where previously existing State designations have been eliminated, to protect the manatee population in that area.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restriction to existing human uses of the sites would result from this rule. No entitlements, grants, user fees, loan programs, or effects on the rights and obligations of their recipients are expected to occur.

d. This rule does not raise novel legal or policy issues. We have previously established other manatee protection areas.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

In order to determine whether the rule will have a significant economic effect on a substantial number of small entities, we utilize available information on the industries most likely to be affected by the designation of the manatee refuge. Currently, no information is available on the specific number of small entities that are potentially affected. However, 27 active permit holders were exempt from the speed limits in the proposed refuge area. Because these zones have been in place since 1999 and people have adjusted and there were no other permit holders, it is reasonable to expect that the emergency rule will impact only the 27 permit holders in the former State speed zones. They are primarily commercial fishing boats and fishing guides. Both would be considered small businesses. The 27 permit holders had State exemptions from the speed restrictions based on an application that stated they would suffer at least a 25 percent income loss without the permit. The usual income level for these businesses is not known, however a 25 percent loss of business income is significant regardless of the level of business income. We acknowledge that there could be a significant loss of income to those permit holders that rely on speed to carry out their business activities, however, the Service believes that the 27 permit holders do not constitute a substantial number.

This rule will add to travel time for recreational boating and commercial activities resulting from extension of existing speed zones. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic effect on small entities resulting from changes in recreational use patterns will not be significant. The economic effects on most small businesses resulting from this rule are likely to be indirect effects related to a reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne

activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 25 mph in the navigation channels, we believe that any economic effect on small commercial fishing or charter boat entities (other than the 27 permit holders) will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

The employment characteristics of Lee County are shown in Table 1 for the year 1997. We included the following SIC (Standard Industrial Classification) categories, because they include businesses most likely to be directly affected by the designation of a manatee refuge:

- Fishing, hunting, trapping (SIC 09)
- Water transportation (SIC 44)
- Miscellaneous retail (SIC 59)
- Amusement and recreation services (SIC 79)
- Non-classifiable establishments (NCE)

TABLE 1.—EMPLOYMENT CHARACTERISTICS OF LEE COUNTY IN FLORIDA—1997

[Includes SIC Codes 09, 44, 59, 79, and NCE [a]]

County	Total mid-March employment [b] (all industries)	Mid-March employment [b] (select SIC codes)	Total establishments (all industries)	Select SIC Codes (includes SIC Codes 09, 44, 59, 79, and NCE [a]				
				Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20+ employees)
Lee	135,300	7,734	11,386	974	602	193	92	87

Source: U.S. Census County Business Patterns (http://www.census.gov/epcd/cbp/view/cbpview.html).

[a] Descriptions of the SIC codes included in this table as follows:
SIC 09—Fishing, hunting, and trapping
SIC 44—Water transportation
SIC 59—Miscellaneous retail service division
SIC 79—Amusement and recreation services
NCE—non-classifiable establishments division

[b] Table provides the high-end estimate whenever the Census provides a range of mid-March employment figures for select counties and SIC codes.

As shown in Table 1, the majority (over 80 percent) of these business establishments in Lee County have fewer than ten employees, with the largest number of establishments employing fewer than four employees. Any economic impacts associated with this rule will affect some proportion of these small entities.

Since the emergency designation is for a manatee refuge, which only requires a reduction in speed, we do not believe the designation would cause significant economic effect on a substantial number of small businesses. Currently available information does not allow us to quantify the number of small business entities, such as charter boats or commercial fishing entities, that may incur direct economic impacts due to the inconvenience of added travel times resulting from the rule, but it is safe to assume that the current 27 permit holders may constitute the affected parties for a 120-day rule. The Service does not believe the 27 permit holders constitute a substantial number. Prior to establishing the Pine Island-Estero Bay as a permanent manatee refuge, public comments on our proposed rule (69 FR 48102, August 6, 2004) will be used for further refinement of the impact on small entities and the general public. In addition, the inconvenience of slow speed zones may cause some recreationists to change their behavior, which may cause some loss of income to some small businesses. The number of recreationists that will change their behavior, and how their behavior will change, is unknown; therefore, the impact on potentially affected small business entities cannot be quantified. However, because boaters will experience only minimal added travel time in most affected areas and the fact that speed zones have been in place for some time now, we believe that this designation will not cause a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804 (2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this rule may cause some inconvenience in the form of added travel time for recreationists and commercial fishing and charter boat businesses because of speed restrictions in manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the affected county. An unknown portion of the establishments shown in Table 1 could be affected by this rule. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns will not be significant. The economic impacts on small business resulting from this rule are likely to be indirect effects related to a reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 25 miles per hour in the navigational channels, we believe that any economic impact on most small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. The recreational charter boat and commercial fishing industries may be affected by lower speed limits for some areas when traveling to and from fishing grounds. However, because of the availability of 25-miles-per-hour navigational channels, this impact is likely to be limited. Further, only 27

active permit holders were exempt from the former State speed zones. The impact will most likely stem from only these permit holders.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists and commercial users due to added travel time, but the resulting economic impacts are believed to be minor and will not interfere with the normal operation of businesses in the affected counties. Added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries, while imposing regulations for at least a limited period, will not impose obligations on State or local governments that have not previously existed.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The manatee protection areas are located over publicly-owned submerged water bottoms.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain any collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule in accordance with criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An Environmental Assessment has been prepared and is available for review by written request to the Field Supervisor (see **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to continue their operation as they have in the past, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available upon request from the Vero Beach Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Kalani Cairns (see **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.108 by adding paragraph (c)(13) as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) * * *

(13) *The Pine Island-Estero Bay Manatee Refuge.* (i) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, south of a line that bears 90° and 270° from Matlacha Pass Green Channel Marker ''77'' (approximate latitude 26°40′00″ North, approximate longitude 82°06′00″ West), and north of Pine Island Road (State Road No. 78), excluding:

(A) The portion of the marked channel otherwise designated in paragraph (c)(13)(iii) of this section;

(B) All waters of Buzzard Bay east and northeast of a line beginning at a point (approximate latitude 26°40′00″ North, approximate longitude 82°05′20″ West) on the southwest shoreline of an unnamed mangrove island east of Matlacha Pass Green Channel Marker ''77'' and bearing 219(to the northeasternmost point (approximate latitude 26°39′58″ North, approximate longitude 82°05′23″ West) of another unnamed mangrove island, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39′36″ North, approximate longitude 81°05′09″ West),

then bearing 115° to the westernmost point (approximate latitude 26°39′34″ North, approximate longitude 82°05′05″ West) of the unnamed mangrove island to the southeast, then running along the western shoreline of said island to its southwesternmost point (approximate latitude 26°39′22″ North, approximate longitude 82°04′53″ West), then bearing 123° to the northwesternmost point (approximate latitude 26°39′21″ North, approximate longitude 82°04′52″ West) of an unnamed mangrove island, then running along the western shoreline of said island to its southeasternmost point (approximate latitude 26°39′09″ North, approximate longitude 82°04′44″ West), then bearing 103° to the northwesternmost point (approximate latitude 26°39′08″ North, approximate longitude 82°04′41″ West) of a peninsula on the unnamed mangrove island to the southeast, then running along the southwestern shoreline of said island to its southeasternmost point (approximate latitude 26°38′51″ North, approximate longitude 82°04′18″ West), then bearing 99° to the southernmost point (approximate latitude 26°38′50″ North, approximate longitude 82°04′03″ West) of the unnamed mangrove island to the east, then bearing 90° to the line's terminus at a point (approximate latitude 26°38′50″ North, approximate longitude 82°03′55″ West) on the eastern shoreline of Matlacha Pass; and

(C) All waters of Pine Island Creek and Matlacha Pass north of Pine Island Road (State Road No. 78) and west and southwest of a line beginning at a point (approximate latitude 26°39′29″ North, approximate longitude 82°06′29″ West) on the western shoreline of Matlacha Pass and bearing 160° to the westernmost point (approximate latitude 26°39′25″ North, approximate longitude 82°06′28″ West) of an unnamed island, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°39′18″ North, approximate longitude 82°06′24″ West), then bearing 128° to the northernmost point (approximate latitude 26°39′12″ North, approximate longitude 82°06′17″ West) of an unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39′00″ North, approximate longitude 82°06′09″ West), then bearing 138° to a point (approximate latitude 26°38′45″ North, approximate longitude 82°05′53″ West) on the northern shoreline of Bear Key, then running along the northern shoreline of Bear Key to its easternmost point (approximate latitude 26°38′44″ North, approximate longitude 82°05′46″ West), then bearing 85° to the westernmost point (approximate latitude 26°38′45″ North, approximate longitude 82°05′32″ West) of Deer Key, then running along the northern shoreline of Deer Key to its easternmost point (approximate latitude 26°38′46″ North, approximate longitude 82°05′22″ West), then bearing 103° to the northwesternmost point (approximate latitude 26°38′45″ North, approximate longitude 82°05′17″ West) of the unnamed mangrove island to the east, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°38′30″ North, approximate longitude 82°05′04″ West), then bearing 106° to the westernmost point (approximate latitude 26°38′30″ North, approximate longitude 82°04′57″ West) of the unnamed island to the southeast, then running along the northern and eastern shorelines of said island to a point (approximate latitude 26°38′23″ North, approximate longitude 82°04′51″ West) on its eastern shoreline, then bearing 113° to the northernmost point of West Island (approximate latitude 26°38′21″ North, approximate longitude 82°04′37″ West), then running along the western shoreline of West Island to the point where the line intersects Pine Island Road (State Road No. 78).

(ii) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, St. James Creek, and San Carlos Bay, south of Pine Island Road (State Road No. 78), north of a line 500 feet northwest of and parallel to the main marked channel of the Intracoastal Waterway, west of a line that bears 302° from Intracoastal Waterway Green Channel Marker ''99'' (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), and east of a line that bears 360° from Intracoastal Waterway Red Channel Marker ''10'' (approximate latitude 26°29′16″ North, approximate longitude 82°03′35″ West), excluding:

(A) The portions of the marked channels otherwise designated in paragraphs (c)(13)(iv) and (v) of this section;

(B) All waters of Matlacha Pass south of Pine Island Road (State Road No. 78) and west of the western shoreline of West Island and a line beginning at the southernmost point (approximate latitude 26°37′25″ North, approximate longitude 82°04′17″ West) of West Island and bearing 149° to the northernmost point (approximate latitude 26°37′18″ North, approximate longitude 82°04′12″ West) of the unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southernmost point (approximate latitude 26°36′55″ North, approximate longitude 82°04′02″ West), then bearing 163° to the line's terminus at a point (approximate latitude 26°36′44″ North, approximate longitude 82°03°58″ West) on the eastern shoreline of Little Pine Island;

(C) All waters of Matlacha Pass, Pontoon Bay, and associated embayments south of Pine Island Road (State Road No. 78) and east of a line beginning at a point (approximate latitude 26°38′12″ North, approximate longitude 82°03′46″ West) on the northwestern shoreline of the embayment on the east side of Matlacha Pass, immediately south of Pine Island Road and then running along the eastern shoreline of the unnamed island to the south to its southeasternmost point (approximate latitude 26°37′30″ North, approximate longitude 82°03′22″ West), then bearing 163° to the northwesternmost point of the unnamed island to the south, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°37′15″ North, approximate longitude 82°03′15″ West), then bearing 186° to the line's terminus at a point (approximate latitude 26°37′10″ North, approximate longitude 82°03′16″ West) on the eastern shoreline of Matlacha Pass;

(D) All waters of Pine Island Creek south of Pine Island Road (State Road No. 78); and all waters of Matlacha Pass, Rock Creek, and the Mud Hole, west of a line beginning at a point (approximate latitude 26°33′52″ North, approximate longitude 82°04′53″ West) on the western shoreline of Matlacha Pass and bearing 22° to a point (approximate latitude 26°34′09″ North, approximate longitude 82°04′45″ West) on the southern shoreline of the unnamed island to the northeast, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34′15″ North, approximate longitude 82°04′39″ West) on its northeastern shoreline, then bearing 24° to a point (approximate latitude 26°34′21″ North, approximate longitude 82°04′36″ West) on the southern shoreline of the large unnamed island to the north, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34′31″ North, approximate longitude 82°04′29″ West) on its eastern shoreline, then bearing 41° to the southernmost point (approximate latitude 26°34′39″ North, approximate longitude 82°04′22″ West) of another unnamed island to the northeast, then running along the eastern shoreline of said island to its northwesternmost point (approximate latitude 26°35′22″

North, approximate longitude 82°04′07″ West), then bearing 2° to the southernmost point (approximate latitude 26°35′32″ North, approximate longitude 82°04′07″ West) of the unnamed island to the north, then running along the eastern shoreline of said island to its northernmost point (approximate latitude 26°35′51″ North, approximate longitude 82°03′59″ West), then bearing 353° to the line's terminus at a point (approximate latitude 26°36′08″ North, approximate longitude 82°04′01″ West) on the eastern shoreline of Little Pine Island; and

(E) All waters of Punta Blanca Bay and Punta Blanca Creek, east of the eastern shoreline of Matlacha Pass and east and north of the eastern and northern shorelines of San Carlos Bay.

(iii) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in Matlacha Pass south of Green Channel Marker ''77'' (approximate latitude 26°40′00″ North, approximate longitude 82°06′00″ West) and north of a line perpendicular to the channel at a point in the channel ¼ mile northwest of the Pine Island Road Bridge (State Road No. 78).

(iv) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in Matlacha Pass south of a line perpendicular to the channel at a point in the channel ¼ mile southeast of the Pine Island Road Bridge (State Road No. 78), and north of a line 500 feet northwest of and parallel to the main marked channel of the Intracoastal Waterway (just north of Green Channel Marker ''1'').

(v) Watercraft may not exceed 25 miles per hour, all year, in all waters within the marked channel in Matlacha Pass that intersects the main Matlacha Pass channel near Green Channel Marker ''15'' (approximate latitude 26°31′57″ North, approximate longitude 82°03′38″ West) and intersects the main marked channel of the Intracoastal Waterway near Green Channel Marker ''101'' (approximate latitude 26°30′39″ North, approximate longitude 82°01′00″ West).

(vi) Watercraft are required to proceed at slow speed from April 1 through November 15 in all canals and boat basins of St. James City and the waters known as Long Cut and Short Cut; and all waters of Pine Island Sound and San Carlos Bay south of a line beginning at the southernmost tip (approximate latitude 26°31′28″ North, approximate longitude 82°06′19″ West) of a mangrove peninsula on the western shore of Pine Island approximately 2,200 feet north of Galt Island and bearing 309° to the southeasternmost point (approximate latitude 26°31′32″ North, approximate longitude 82°06′25″ West) of another mangrove peninsula, then running along the southern shoreline of said peninsula to its southwesternmost point (approximate latitude 26°31′40″ North, approximate longitude 82°06′38″ West), then bearing 248° to a point (approximate latitude 26°31′40″ North, approximate longitude 82°06′39″ West) on the eastern shoreline of an unnamed mangrove island, then running along the southern shoreline of said island to its southwesternmost point (approximate latitude 26°31′39″ North, approximate longitude 82°06′44″ West), then bearing 206° to the line's terminus at the northernmost point of the MacKeever Keys (approximate latitude 26°31′09″ North, approximate longitude 82°07′09″ West), east of a line beginning at said northernmost point of the MacKeever Keys and running along and between the general contour of the western shorelines of said keys to a point (approximate latitude 26°30′27″ North, approximate longitude 82°07′08″ West) on the southernmost of the MacKeever Keys, then bearing 201° to a point (approximate latitude 26°30′01″ North, approximate longitude 82°07′19″ West) approximately 150 feet due east of the southeasternmost point of Chino Island, then bearing approximately 162° to Red Intracoastal Waterway Channel Marker ''22'' (approximate latitude 26°28′57″ North, approximate longitude 82°06′55″ West), then bearing approximately 117° to the line's terminus at Red Intracoastal Waterway Channel Marker ''20'' (approximate latitude 26°28′45″ North, approximate longitude 82°06′38″ West), north of a line beginning at said Red Intracoastal Waterway Channel Marker ''20'' and bearing 86° to a point (approximate latitude 26°28′50″ North, approximate longitude 82°05′48″ West) ¼ mile south of York Island, then running parallel to and ¼ mile south of the general contour of the southern shorelines of York Island and Pine Island to the line's terminus at a point on a line bearing 360° from Red Intracoastal Waterway Channel Marker ''10'' (approximate latitude 26°29′16″ North, approximate longitude 82°03′35″ West), and west and southwest of the general contour of the western and southern shorelines of Pine Island and a line that bears 360° from said Red Intracoastal Waterway Channel Marker ''10,'' excluding the portion of the marked channel otherwise designated in paragraph (c)(13)(vii) of this section.

(vii) Watercraft may not exceed 25 miles per hour from April 1 through November 15 in all waters of the marked channel that runs north of the power lines from the Cherry Estates area of St. James City into Pine Island Sound, east of the western boundary of the zone designated in paragraph (c)(13)(vi) of this section, and west of a line perpendicular to the power lines that begins at the easternmost point (approximate latitude 26°30′25″ North, approximate longitude 82°06′15″ West) of the mangrove island on the north side of the power lines approximately 1,800 feet southwest of the Galt Island Causeway.

(viii) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and Punta Rassa Cove east of a line that bears 352° from the northernmost tip of the northern peninsula on Punta Rassa (approximate latitude 26°29′44″ North, approximate longitude 82°00′33″ West), and south of a line that bears 122° from Intracoastal Waterway Green Channel Marker ''99'' (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), including all waters of Shell Creek and associated waterways.

(ix) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and the Caloosahatchee River, including the residential canals of Cape Coral, northeast of a line that bears 302° and 122° from Intracoastal Waterway Green Channel Marker ''99'' (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), west of a line that bears 346° from Intracoastal Waterway Green Channel Marker ''93'' (approximate latitude 26°31′37″ North, approximate longitude 81°59′46″ West), and north and northwest of the general contour of the northwestern shoreline of Shell Point and a line that bears approximately 74° from the northernmost tip (approximate latitude 26°31′31″ North, approximate longitude 81°59′57″ West) of Shell Point to said Intracoastal Waterway Green Channel Marker ''93,'' excluding the Intracoastal Waterway between markers ''93'' and ''99'' (which is already designated as a Federal manatee protection area, requiring watercraft to proceed at slow speed, and is not impacted by this rulemaking).

(x) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hell Peckney Bay southeast of Hurricane Bay, northeast of the northern shorelines of Julies Island and the unnamed island immediately northwest of Julies Island and a line that bears 312° from the northwesternmost point of Julies Island (approximate latitude 26°26″37″ North, approximate longitude 81°54′57″ West), northwest of

Estero Bay, and southwest of a line beginning at the southernmost point (approximate latitude 26°27′23″ North, approximate longitude 81°55′11″ West) of an unnamed mangrove peninsula in northwest Hell Peckney Bay and bearing 191° to the northernmost point (approximate latitude 26°27′19″ North, approximate longitude 81°55′11″ West) of an unnamed mangrove island, then running along the northern shoreline of said island to its southeasternmost point (approximate latitude 26°27′11″ North, approximate longitude 81°55′05″ West), then bearing 115° to a point (approximate latitude 26°27′03″ North, approximate longitude 81°54′47″ West) on the northwest shoreline of an unnamed mangrove island, then running along the northern shoreline of said island to its northeasternmost point (approximate latitude 26°27′02″ North, approximate longitude 81°54′33″ West), and then bearing 37° to the line's terminus at the westernmost point of an unnamed mangrove peninsula in eastern Hell Peckney Bay.

(xi) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hendry Creek south of a line that bears 270° from a point (approximate latitude 26°28′40″ North, approximate longitude 81°52′56″ West) on the eastern shoreline of Hendry Creek; and all waters of Estero Bay southeast and east of Hell Peckney Bay, a line that bears 340° from a point (approximate latitude 26°25′56″ North, approximate longitude 81°54′25″ West) on the northern tip of an unnamed mangrove peninsula on the northeastern shoreline of Estero Island, and the northern shoreline of Estero Island, south of Hendry Creek and a line that bears 135° and 315° from Red Channel Marker ''18'' (approximate latitude 26°27′46″ North, approximate longitude 81°52′00″ West) in Mullock Creek, and north of a line that bears 72° from the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, including the waters of Buccaneer Lagoon at the southern end of Estero Island, but excluding:

(A) The portions of the marked channels otherwise designated in paragraph (c)(13)(xiii) of this section;

(B) The Estero River; and

(C) To waters of Big Carlos Pass east of a line beginning at a point (approximate latitude 26°24′34″ North, approximate longitude 81°53′05″ West) on the eastern shoreline of Estero Island and bearing 36° to a point (approximate latitude 26°24′40″ North, approximate longitude 81°53′00″ West) on the southern shoreline of Coon Key, south of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24′39″ North, approximate longitude 81°52′34″ West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and west of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the southern shoreline of said unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island.

(xii) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Estero Bay and Big Hickory Bay south of a line that bears 72° from the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, east of the centerline of State Road No. 865 (including the waters of the embayment on the eastern side of Black Island and the waters inshore of the mouth of Big Hickory Pass that are west of State Road No. 865), and north of a line that bears 90° from a point (approximate latitude 26°20′51″ North, approximate longitude 81°50′33″ West) on the eastern shoreline of Little Hickory Island, excluding Spring Creek and the portions of the marked channels otherwise designated under paragraph (c)(13)(xiii) of this section and the portion of Hickory Bay designated in paragraph (c)(13)(xiii) of this section.

(xiii) Watercraft may not exceed 25 miles per hour all year in:

(A) All waters of Big Hickory Bay north of a line that bears 90° from a point (approximate latitude 26°20′51″ North, approximate longitude 81°50′33″ West) on the eastern shoreline of Little Hickory Island, west of a line beginning at a point (approximate latitude 26°20′48″ North, approximate longitude 81°50′24″ West) on the southern shoreline of Big Hickory Bay and bearing 338° to a point (approximate latitude 26°21′39″ North, approximate longitude 81°50′48″ West) on the water in the northwestern end of Big Hickory Bay near the eastern end of Broadway Channel, south of a line beginning at said point on the water in the northwestern end of Big Hickory Bay and bearing 242° to the northernmost point (approximate latitude 26°21′39″ North, approximate longitude 81°50′50″ West) of the unnamed mangrove island south of Broadway Channel, and east of the eastern shoreline of said mangrove island and a line beginning at the southernmost point of said island (approximate latitude 26°21′07″ North, approximate longitude 81°50′58″ West) and bearing 167° to a point on Little Hickory Island (approximate latitude 26°21′03″ North, approximate longitude 81°50′57″ West);

(B) All waters of the main marked North-South channel in northern Estero Bay from Green Channel Marker ''37'' (approximate latitude 26°26′02″ North, approximate longitude 81°54′29″ West) to Green Channel Marker ''57'' (approximate latitude 26°25′08″ North, approximate longitude 81°53′29″ West);

(C) All waters of the main marked North-South channel in southern Estero Bay south of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the southern shoreline of the unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, and north and east of Red Channel Marker ''62'' (approximate latitude 26°21′31″ North, approximate longitude 81°51′20″ West) in Broadway Channel;

(D) All waters within the portion of the marked channel leading to the Gulf of Mexico through New Pass, west of the North-South channel and east of State Road No. 865; all waters of the marked channel leading to Mullock Creek north of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24′39″ North, approximate longitude 81°52′34″ West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and south of Red Channel Marker ''18'' (approximate latitude 26°27′46″ North, approximate longitude 81°52′00″ West);

(E) All waters of the marked channel leading from the Mullock Creek Channel to the Estero River, west of the mouth of the Estero River. (This designation only applies if a channel is marked in accordance with permits issued by all applicable State and Federal authorities. In the absence of a properly permitted channel, this area is as designated under paragraph (c)(13)(xi) of this section.);

(F) All waters of the marked channel commonly known as Alternate Route Channel, with said channel generally running between Channel Marker ''1'' (approximate latitude 26°24′29″ North,

approximate longitude 81°51′53″ West) and Channel Marker ''10'' (approximate latitude 26°24′00″ North, approximate longitude 81°51′09″ West);

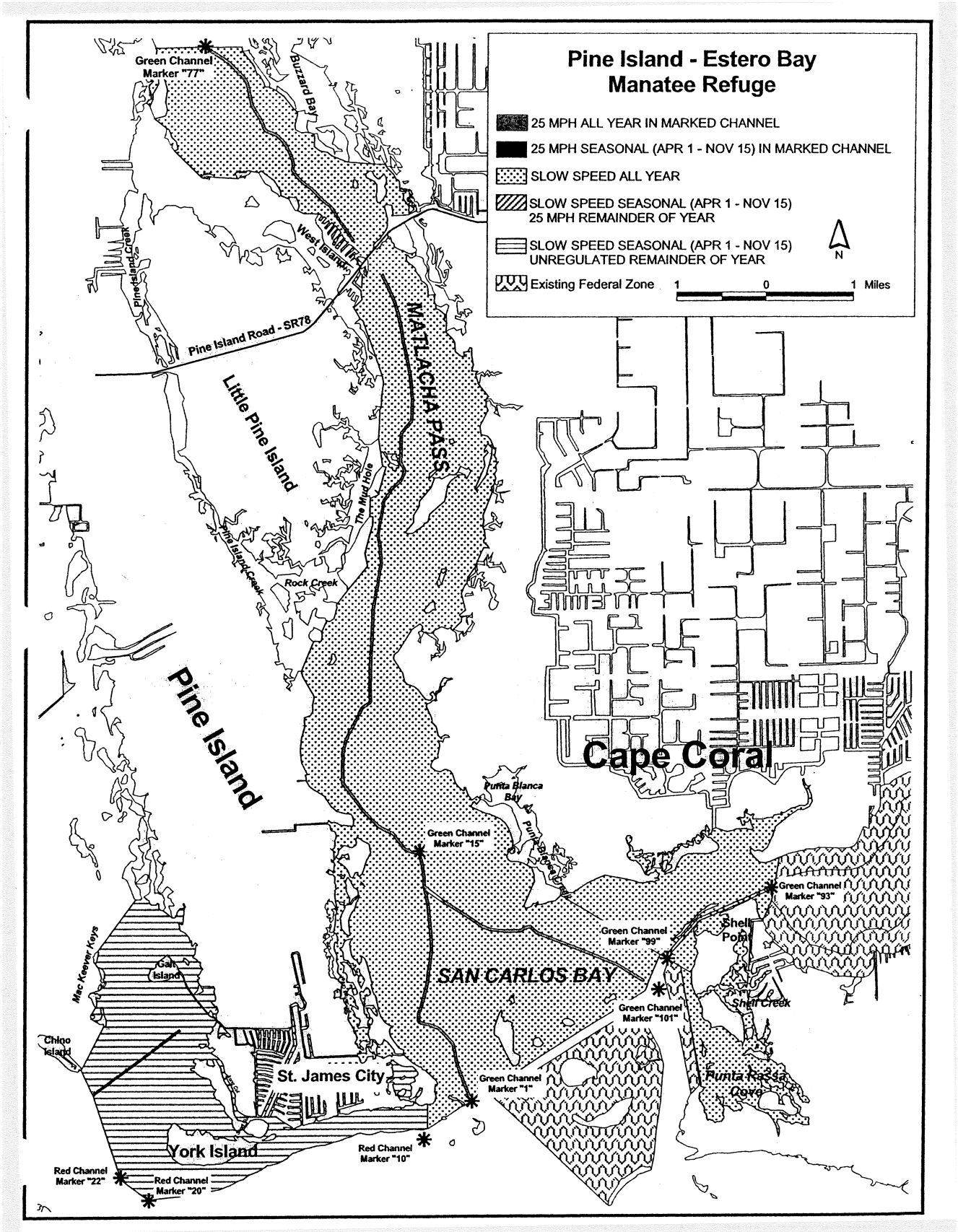
(G) All waters of the marked channel commonly known as Coconut Channel, with said channel generally running between Channel Marker ''1'' (approximate latitude 26°23′44″ North, approximate longitude 81°50′55″ West) and Channel Marker ''23'' (approximate latitude 26°24′00″ North, approximate longitude 81°50′30″ West);

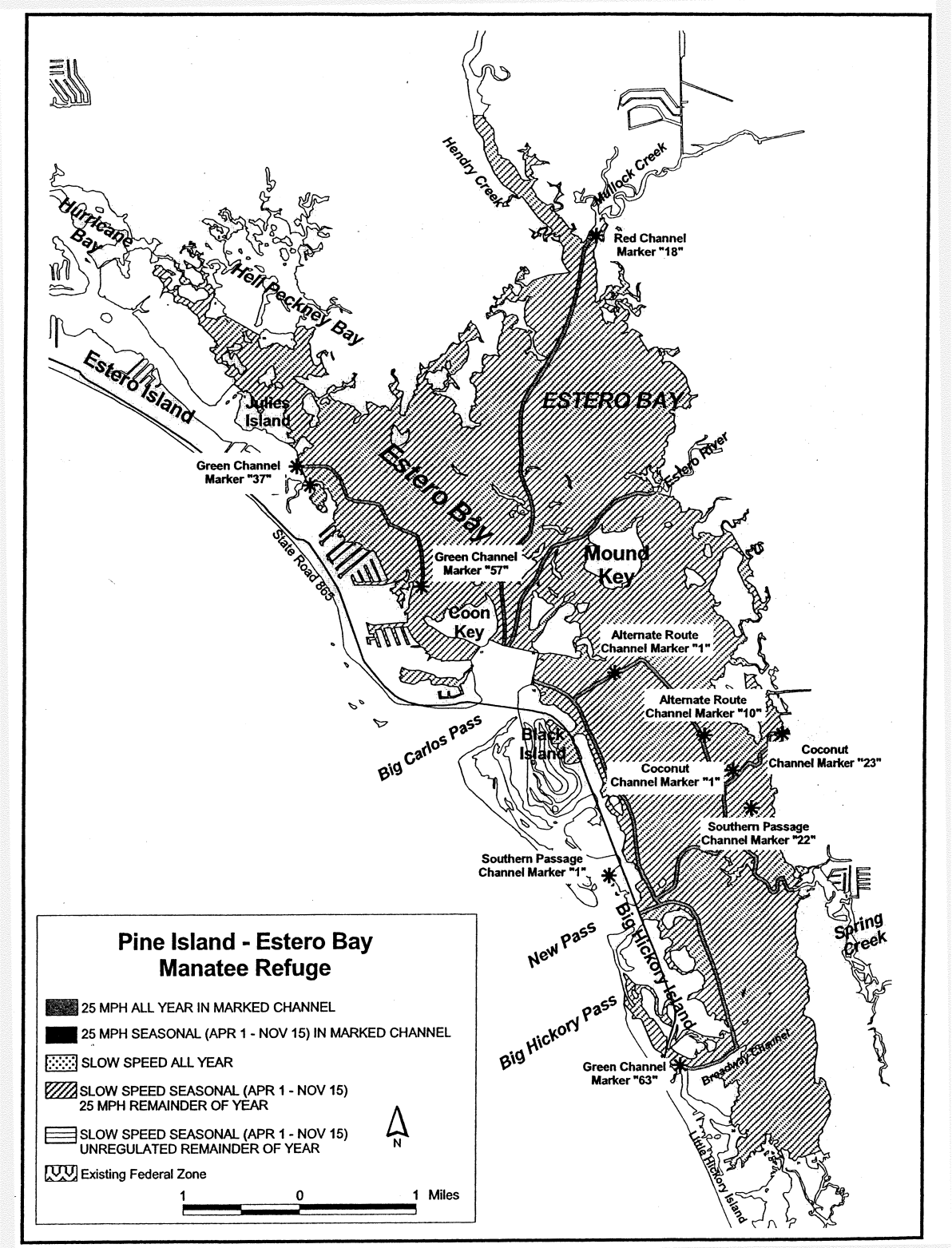
(H) All waters of the marked channel commonly known as Southern Passage Channel, with said channel generally running between Channel Marker ''1'' (approximate latitude 26°22′58″ North, approximate longitude 81°51′57″ West) and Channel Marker ''22'' (approximate latitude 26°23′27″ North, approximate longitude 81°50′46″ West); and

(I) All waters of the marked channel leading from the Southern Passage Channel to Spring Creek, west of the mouth of Spring Creek.

(xiv) Maps of the Pine Island-Estero Bay Manatee Refuge follow:

BILLING CODE 4310–55–P


Pine Island - Estero Bay
Manatee Refuge
25 MPH ALL YEAR IN MARKED CHANNEL
25 MPH SEASONAL (APR 1 - NOV 15) IN MARKED CHANNEL
SLOW SPEED ALL YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
25 MPH REMAINDER OF YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
UNREGULATED REMAINDER OF YEAR
Existing Federal Zone
1 0 1 Miles
N
Green Channel Marker "77"
Buzzard Bay
West Island
Pinelsland Creek
Pine Island Road - SR78
MATLACHA PASS
Little Pine Island
The Mud Hole
Pine Island Creek
Rock Creek
Pine Island
Cape Coral
Punta Blanca Bay
Punta Blanca Creek
Green Channel Marker "15"
Green Channel Marker "93"
Green Channel Marker "99"
Shell Point
Shell Creek
SAN CARLOS BAY
Green Channel Marker "101"
Mac Keever Keys
Galt Island
Chino Island
St. James City
Green Channel Marker "1"
Punta Rassa Cove
York Island
Red Channel Marker "10"
Red Channel Marker "22"
Red Channel Marker "20"



Dated: November 26, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–26705 Filed 12–3–04; 8:45 am]

BILLING CODE 4310–SS–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 040421127–4322–02; I.D. 051403A]

RIN 0648–AR10

Atlantic Highly Migratory Species; Atlantic Trade Restrictive Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is adjusting the regulations governing the trade of species regulated by the International Commission for the Conservation of Atlantic Tunas (ICCAT) in the North and South Atlantic Ocean to implement recommendations adopted at the 2002 and 2003 meetings of ICCAT. This final rule lifts or implements import prohibitions for bigeye tuna, bluefin tuna, and swordfish on Honduras, St. Vincent and the Grenadines, Belize, Sierra Leone, Bolivia, and Georgia. This rule also prohibits imports from vessels on the ICCAT illegal, unreported, and unregulated fishing list and from vessels that are not listed on ICCAT's record of vessels that are authorized to fish in the Convention Area. Additionally, this rule requires issuance of a chartering permit before a vessel begins fishing under a chartering arrangement.

DATES: This final rule will be effective on January 5, 2005.

ADDRESSES: Copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) may be obtained from Christopher Rogers, Chief, Highly Migratory Species Management Division F/SF1, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the EA/RIR/FRFA are also available from the Highly Migratory Species Management Division website at *www.nmfs.noaa.gov/sfa/hms*.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Michael Clark by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish and tuna fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq*. The ATCA authorizes the promulgation of regulations as necessary and appropriate to carry out ICCAT recommendations. The trade-related ICCAT recommendations for calendar years 2002 and 2003 that are implemented by this final rule include, but are not limited to: 02–16, 02–17, 02–18, 02–19, 02–20, 02–21, 02–22, 02–23, 03–16, 03–17, and 03–18.

Trade Measures

In order to conserve and better manage bigeye tuna (BET), bluefin tuna (BFT), and swordfish (SWO) in the Atlantic Ocean, ICCAT adopted several recommendations at its 2002 and 2003 meetings regarding prohibitions or the lifting of prohibitions on the import of these species. Based on available information, ICCAT concluded that Sierra Leone, Bolivia, and Georgia were engaged in fishing activities that diminish the effectiveness of ICCAT conservation and management measures. Thus, ICCAT recommended that Contracting Parties (i.e., any member of the United Nations or any specialized agency of the United Nations that has signed on to the International Convention for the Conservation of Atlantic Tunas) prohibit the import of Atlantic BET, BFT, and SWO from Sierra Leone and Atlantic BET from Bolivia and Georgia. In this action, NMFS prohibits such imports from Sierra Leone, Bolivia, and Georgia. Upon determination by ICCAT that Sierra Leone, Bolivia, or Georgia has brought its fishing practices into consistency with ICCAT conservation and management measures, NMFS will take action to remove the appropriate import restrictions.

At its 2002 meeting, ICCAT also recommended that several import prohibitions be lifted. One of these recommendations included removing the import prohibition of Atlantic BET, BFT, and SWO from Honduras. NMFS did not finalize the 2000 ICCAT recommendation regarding BET imports from Honduras because ICCAT did not reach consensus in 2001 regarding whether Honduras had brought its fishing practices into conformity with ICCAT conservation and management measures (67 FR 70023, November 20, 2002). Another 2002 recommendation would lift the import prohibitions regarding Atlantic BET, BFT, and SWO from Belize and Atlantic BET from St. Vincent and the Grenadines. Consistent with these recommendations, and as stated in the proposed rule on May 6, 2004 (69 FR 25357), this final rule relieves the restrictions imposed on November 20, 2002 (67 FR 70023), for BET from Belize and St. Vincent and the Grenadines; August 21, 1997 (62 FR 44422), for BFT from Belize and Honduras; and December 12, 2000 (65 FR 77523), for SWO from Belize and Honduras. Additionally, this final rule does not impose restrictions on Honduras regarding BET imports.

Vessel Chartering

At its 2002 meeting, ICCAT addressed the practice of charter or chartering arrangements, which are defined as an agreement between a vessel and a foreign entity (e.g., country, business, government, person) to fish in foreign waters without reflagging the vessel. ICCAT recommended that chartering and flag Contracting Parties adopt several requirements to ensure their compliance with relevant ICCAT conservation and management measures. The recommendation states that at the time of the chartering arrangement, the chartering and flag Contracting Parties shall provide specific information concerning the charter to the ICCAT Executive Secretary, including vessel details, target species, duration, and consent of the flag Contracting Party or Cooperating non-Contracting Party, Entity or Fishing Entity. A Cooperating non-Contracting Party, Entity or Fishing Entity is a special status that ICCAT created; Chinese Taipei participates in ICCAT under this status. The ICCAT Executive Secretary should also be notified upon termination of the charter. The recommendation also states that, unless specifically provided in the chartering arrangement and consistent with relevant domestic law and regulation, catches taken pursuant to the arrangement shall be unloaded exclusively in the ports of the chartering Contracting Party/foreign entity or under its direct supervision. NMFS uses the term ''offload'' in its regulations to refer to the activity of unloading or removing fish from a vessel. Such catches should be counted against the quota of the chartering Contracting Party but both the chartering and flag countries shall record the catch amounts separately from catches taken by other vessels.

In order to implement the chartering recommendations of ICCAT, NMFS requires that U.S. vessel owners with HMS permits apply for and obtain a chartering permit before fishing under a chartering arrangement. Under this final rule and consistent with the ICCAT recommendations, vessels issued a chartering permit shall not be authorized to use the quota or entitlement of the United States until

the chartering permit expires or is terminated. Having a chartering permit will not obviate the need to obtain a fishing license, permits, or other authorizations issued by the chartering nation in order to fish in foreign waters, or obtain other authorizations such as a High Seas Fishing Compliance Act Permit, 50 CFR 300.10 *et seq.* Additionally, incidental takes of, or interactions with, protected resources will be included against the authorized take levels specified in any relevant Biological Opinions. A U.S. vessel shall not be authorized to fish under more than one chartering arrangement at the same time. NMFS will issue chartering permits only if it determines that the chartering arrangement is in conformance with ICCAT's conservation and management programs.

ICCAT also recommended that observers be aboard at least 10 percent of the chartered vessels or during 10 percent of the fishing time. NMFS has the authority to place observers onboard a chartered vessel pursuant to 50 CFR 635.7. Vessels participating in chartering arrangements may be required to use vessel monitoring systems (VMS) for the duration of the arrangement, including when vessels are traveling to and from the locale of fishing, dependent on the terms and conditions of the chartering permit.

Illegal, Unreported, and Unregulated (IUU) Fishing

In an effort to prevent and deter IUU fishing, ICCAT adopted three recommendations (02–23, 02–22, and 03–16). Recommendations 02–23 and 02–22 outline processes for identifying vessel lists, ICCAT adoption of the lists, and revisions via the submission of provisional lists to ICCAT for further consideration. Recommendation 02–23 establishes a list of vessels presumed to have carried out IUU fishing activities in the ICCAT convention area (also referred to as ''negative list''). Each year, Contracting Parties shall transmit to the ICCAT Executive Secretary a list of vessels suspected of IUU fishing, accompanied by supporting evidence. Upon adoption of the list of IUU vessels, Contracting Parties shall enact measures to prevent vessels flying their flag from transshipping with a vessel on the negative list, prevent vessels on the negative list from landing or transhipping in their ports, prohibit the chartering of an IUU vessel, refuse to grant their flag to an IUU vessel, and prohibit imports, landing, or transshipment of ICCAT regulated species from IUU vessels.

Recommendation 02–22 establishes a record of vessels larger than 24 meters in length that are authorized to fish for ICCAT regulated species in the Convention Area (also referred to as ''positive list''). To create this record, Contracting Parties shall submit a list to the ICCAT Executive Secretary containing information relating to its approved vessels. ICCAT recommended that the Contracting Parties take measures to prohibit the fishing for, retaining on board, transshipment, and landing of ICCAT regulated species by vessels which are not listed on the positive list.

This final rule implements the measures associated with both these lists. The United States submitted a positive list to ICCAT on June 23, 2004, and plans to update this list annually, or as requested by ICCAT. Because the United States does not know of any domestic vessels that participate in IUU fishing, the United States did not submit a negative list to ICCAT but will in the future, as appropriate.

ICCAT also recommended at its 2003 meeting that Contracting Parties prohibit landings from fishing vessels, placing in cages for farming and/or the transshipment within their jurisdiction of tunas or tuna-like species caught by IUU fishing activities (Recommendation 03–16). This final rule also implements this additional measure to prevent and deter IUU fishing.

Response to Comments

NMFS received several public comments from two individuals prior to the closing date of the comment period for the proposed rulemaking which ended on June 21, 2004. The individuals expressed concern about numerous aspects of Highly Migratory Species management, both directly and indirectly related to this rulemaking. These comments are summarized below with the responses.

Comment 1: Object to lifting country specific tuna import prohibitions.

Response: ICCAT adopted the recommendations to lift certain import restrictions because these countries had come into compliance with the conservation and management goals of the commission. Concurrently, ICCAT adopted other recommendations that ban imports from certain countries that are not complying with the goals of the convention. Thus, this final rule implements all the ICCAT recommendations from 2002 and 2003 that lift or ban imports of ICCAT species.

Comment 2: NMFS excludes citizens that are not directly involved with fisheries from their public hearings.

Response: Public hearings conducted by NMFS are open to any and all interested members of the public, including those with physical disabilities and the hearing impaired, not just those directly involved in the fishery.

Comment 3: The penalties for violation of chartering permits should be severe, including permit sanctions, and be detailed in the regulatory text.

Response: NMFS agrees that submitting false charter permit information should be met with stiff penalties. Penalties are often based, among other things, on past convictions, severity of offense, and propensity to commit the offense again.

Comment 4: The terms and conditions of chartering permits should include specifics about when the VMS should be turned off and on if they are required to use an equivalent system while fishing in foreign waters. In addition, in situations where the chartering countries quota has been exceeded and a no dead discard provision is in place, the United States should stipulate that permit holders will be required to seek an exemption from the chartering country before entering into a chartering arrangement.

Response: The terms and conditions of chartering permits will describe the specific requirements and allowances of individual chartering permits, including: use of VMS, reporting requirements, target species and size, quantity of fish landed, gear employed, protected species interactions, and so forth. Restrictions in place by both flag and chartering nations must be adhered to for the entire duration of the agreement and would be considered before permit issuance.

Changes From the Proposed Rule

This rule modifies the regulatory text of the proposed rule that published on May 6, 2004, (69 FR 25357) to clarify the reporting requirements (submission dates, etc.) for chartering permits.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

Based on the management measures in several proposed rules, including the proposed rule for these regulations, a new Biological Opinion (BiOp) on the Atlantic pelagic longline (PLL) fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely

to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified Reasonable and Prudent Alternatives (RPAs) necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with PLL gear onboard. NMFS is implementing the other RPMs in compliance with the BiOp. On August 12, 2004, NMFS published an Advance Notice of Proposed Rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp. The actions in this final rule are not expected to change the takes of, or interactions with, protected species. Incidental takes of, or interactions with, protected species that are listed as threatened or endangered under the Endangered Species Act taking place under the auspices of a chartering permit arrangement will be included against the authorized take levels specified in relevant Biological Opinions.

NMFS has determined that the regulations selected in this final rule will be implemented in a manner consistent, to the maximum extent practicable, with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. The proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. All of the states that responded found NMFS' proposed actions to be consistent with their coastal zone management programs. Concurrence is presumed for those states that did not respond.

NMFS has prepared a final regulatory flexibility analysis that examined the economic impacts of this action on small entities. The purpose of this rulemaking is to implement the 2002 and 2003 ICCAT recommendations regarding trade measures consistent with the HMS FMP, the Magnuson-Stevens Act, ATCA, and other domestic regulations. NMFS is authorized to implement ICCAT recommendations under ATCA. ICCAT recommendations are part of an international cooperative effort to rebuild, conserve, and manage tuna and tuna-like species. The preferred alternative outlined in this final rule would satisfy the purpose of this rule, to implement the United States' obligation to implement the binding conservation and management measures that have been adopted by ICCAT. The preferred alternative is consistent with the ICCAT trade related recommendations, the ATCA, the Magnuson-Stevens Act, and the HMS FMP. A summary of the public comments received and NMFS' responses thereto is included in the preamble. No comments were received regarding the economic impact of this rule or the initial regulatory flexibility analysis.

As this final rule impacts the trade and importation of HMS (e.g., ICCAT regulated species) in the United States and chartering arrangements with foreign entities, the regulations will not directly impact a specific domestic fishery. However, these measures could impact HMS dealers and vessels that participate in chartering arrangements, all of which NMFS considers to be small entities. In December 2003, there were approximately 516 and 302 dealer permits issued for tuna and SWO, respectively. NMFS estimates that less than 10 domestic vessels may participate in chartering arrangements in any given calender year.

To address the 2002 and 2003 ICCAT recommendations regarding trade measures, two alternatives were prepared: a preferred alternative to implement the ICCAT recommendations regarding trade measures and a no action alternative that would not implement the recommendations. The no action alternative of not implementing the ICCAT trade recommendations was not selected because it is not consistent with ATCA. As with the preferred alternative the no action alternative would have few, if any, economic impacts on small entities.

The preferred alternative in this final rule (imposing or lifting trade restrictions, establishing chartering notification and permit requirements, and implementing measures designed to prevent IUU fishing and fishing by unauthorized large scale fishing vessels) is not expected to have significant economic or social impacts. By prohibiting the import of BET, BFT, and SWO from Sierra Leone and BET from Bolivia and Georgia, NMFS could reduce the economic benefits to importers and dealers. Conversely, by lifting the trade restrictions on imports of BFT and SWO from Honduras and lifting the prohibition of imports of BET from Belize and St. Vincent and the Grenadines and BFT and SWO from Belize, NMFS could provide economic benefits to importers and dealers. However, because current and past import levels of these fish species from these countries are either low or nonexistent, NMFS does not anticipate major positive or negative economic impacts as a result of implementing this measure.

The chartering permit is not expected to significantly increase the administrative burden to the vessel owners or result in significant economic impacts. The application process requires the provision, through mail or facsimile, of information, including, but not limited to: name and registration number of the vessel, name and address of the owner, description of the vessel, targeted species, quota allocated to the chartering party, and the duration of the chartering arrangement. Additional information such as copies of fishing licenses, permits, other authorizations (e.g., High Seas Fishing Compliance Act Permit, 50 CFR 300.10), and documentation regarding the legal establishment of the chartering company will be requested. A vessel shall not be authorized to fish under more than one chartering arrangement at the same time and all interactions with protected species outside the United States EEZ will be included against the authorized take levels of the relevant BiOps. NMFS will issue permits only if it is determined that the chartering arrangement is in conformance with ICCAT's conservation and management programs. NMFS does not anticipate major economic impacts to domestic vessels as a result of a permit denial, given that these vessels will continue to be able to fish in domestic waters for HMS and may decide to sell HMS domestically or export product to other countries depending upon which market has the higher product price. Given that only one exempted fishing permit exempting vessels from U.S. regulations for chartering arrangements has been issued under current requirements in the fishery, NMFS does not anticipate any significant economic impacts to a substantial number of domestic vessels as a result of taking this action.

NMFS does not anticipate any significant impacts to U.S. entities by

prohibiting the import of ICCAT regulated species from vessels known to be IUU fishing or from unauthorized large scale fishing vessels. Currently, NMFS does not have specific information concerning the amount of HMS imported from such vessels. However, NMFS believes that the amount of HMS imported from these types of vessels is insignificant, and therefore does not expect any major economic impacts associated with implementation of the management measure or with no action.

NMFS considers all HMS vessel and dealer permit holders to be small entities, and thus, in order to meet the objectives of this final rule and address the management concerns at hand, NMFS cannot exempt small entities or change the reporting requirements for small entities. NMFS is implementing these measures to comply with ICCAT recommendations which are negotiated between many countries and are therefore not easily adjusted or modified. As such, the use of performance rather than design standards and the simplification of compliance and reporting requirements under this rule are not practicable. Furthermore, this action does not duplicate, overlap, or conflict with any other relevant Federal rules.

This final rule contains new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The chartering application and notification requirements for vessels entering a chartering arrangement has been cleared by OMB under control number 0648–0495. Public reporting burden for this collection of information is estimated to average 40 minutes per application and 5 minutes per notification upon termination of the chartering arrangement. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 23, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.2 the definition of ''Tuna or tuna-like'' is added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Tuna or tuna-like means the Scombriformes (with the exception of families Trichiuridae and Gempylidae and the genus Scomber) and such other species of fishes that are regulated by ICCAT in the Atlantic Ocean.

* * * * *

■ 3. In § 635.5, paragraph (a)(6) is added to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(6) *Chartering Arrangements.* (i) For the purposes of this section, a chartering arrangement means any contract, agreement, or commitment between a U.S. vessel owner and a foreign entity (e.g., government, company, person) by which the control, use, possession, or services of a vessel are secured, for a period of time for fishing targeting Atlantic HMS. Chartering arrangements under this part do not include bareboat charters under which a vessel enters into a fishing agreement with a foreign entity, changes registration to fish under another country's registration then, once the agreed-upon fishing is completed, reverts back to the vessel's original registration.

(ii) Before fishing under a chartering arrangement, the owner of a fishing vessel subject to U.S. jurisdiction must apply for, and obtain, a chartering permit as specified in § 635.32 (e) and (f). If a chartering permit is obtained, the vessel owner must submit catch information as specified in the terms and conditions of that permit. All catches will be recorded and counted against the applicable quota of the Contracting Party to which the chartering foreign entity is a member and, unless otherwise provided in the chartering permit, must be offloaded in the ports of the chartering foreign entity or offloaded under the direct supervision of the chartering foreign entity.

(iii) If the chartering arrangement terminates before the expiration of the charter permit, the vessel owner must notify NMFS immediately and in writing, upon termination of the chartering arrangement. Such notification requirements shall also apply to situations where the chartering arrangement is temporarily suspended and during intermittent periods where the vessel may be fishing under U.S. quotas for Atlantic HMS.

* * * * *

■ 4. In § 635.32, paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively, and revised; paragraph (a) is revised; and a new paragraph (e) is added to read as follows:

§ 635.32 Specifically authorized activities.

(a) *General.* (1) Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize activities otherwise prohibited by the regulations contained in this part for the conduct of scientific research, the acquisition of information and data, the enhancement of safety at sea, the purpose of collecting animals for public education or display, the investigation of bycatch, economic discard and regulatory discard, or for chartering arrangements.

(2) Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS; exempted fishing and educational activities; programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks; or chartering arrangements. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit, scientific research permit, display permit, or chartering permit issued in response to requests for authorization under this section.

(3) For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization.

(4) Inspection requirements specified in § 635.5(e) apply to the owner or operator of a fishing vessel that has been issued a exempted fishing permit, scientific research permit, display permit, or chartering permit.

* * * * *

(e) *Chartering permits.* (1) For activities consistent with the purposes of this section, § 635.5(a), and § 600.745(b)(1) of this chapter, NMFS may issue chartering permits for record keeping and reporting purposes. An application for a chartering permit must include all information required under § 600.745(b)(2) of this chapter and, in addition, written notification of: the species of fish covered by the chartering arrangement and quota allocated to the Contracting Party of which the chartering foreign entity is a member; duration of the arrangement; measures adopted by the chartering Contracting Party of which the foreign entity is a member to implement ICCAT chartering provisions; copies of fishing licenses, permits, and/or other authorizations issued by the chartering Contracting Party of which the foreign entity is a member for the vessel to fish under the arrangement; a copy of the High Seas Fishing Compliance Act Permit pursuant to 50 CFR 300.10; documentation regarding interactions with protected resources; and documentation regarding the legal establishment of the chartering company. To be considered complete, an application for a chartering permit for a vessel must include all information specified in § 600.745(b)(2) of this chapter and in § 635.32(e) and (f).

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid chartering permit is required to fish for, take, retain, or possess ICCAT- regulated species under chartering arrangements as specified in § 635.5(a)(6). A valid chartering permit must be on board the harvesting vessel, must be available when ICCAT-regulated species are landed, and must be presented for inspection upon request of an authorized officer. A chartering permit is valid for the duration of the chartering arrangement or until the expiration date specified on the permit, whichever comes first. Vessels issued a chartering permit shall not be authorized to fish under applicable Atlantic Highly Migratory Species quotas or entitlements of the United States until the chartering permit expires or is terminated.

(3) Charter permit holders must submit logbooks and comply with reporting requirements as specified in § 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of foreign countries, the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, as well as ICCAT recommendations.

(4) Observers may be placed on board vessels issued chartering permits as specified under § 635.7.

(5) NMFS will issue a chartering permit only if it determines that the chartering arrangement is in conformance with ICCAT's conservation and management programs.

(6) A vessel shall be authorized to fish under only one chartering arrangement at a time.

(7) All chartering permits are subject to sanctions and denials as indicated under § 635.4(a)(6).

(f) *Applications and renewals.* Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register, on an annual or more frequent basis as necessary, notification of previously authorized exempted fishing, scientific research, public display, or chartering activities and to solicit public comment on anticipated EFP, SRP, LOA, public display, or chartering permit requests. Applications for EFP, SRP, public display, or chartering permit renewals are required to include all reports specified in the applicant's previous permit including the year-end report, all delinquent reports for permits issued in prior years, and all other specified information. In situations of delinquent reports, renewal applications will be deemed incomplete and a permit will not be issued under this section.

(g) *Terms and conditions.* (1) For EFPs, SRPs, and public display permits: Written reports on fishing activities and disposition released under a permit issued under this section, must be submitted to NMFS, within 5 days of return to port. NMFS will provide specific conditions and requirements as needed, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a ''no-catch'' report must be submitted to NMFS within 5 days of the last day of that month.

(2) For chartering permits, written reports of fishing activities must be submitted to NMFS by a date specified, and to an address designated, in the terms and conditions of each chartering permit.

(3) An annual written summary report of all fishing activities and disposition of all fish captured under the permit must be submitted to NMFS for all the permits (EFP, SRP, Display, and Chartering Permits) listed in this section within 30 days after the expiration date of the permit.

■ 5. Section 635.45 is revised to read as follows:

§ 635.45 Products denied entry.

(a) All shipments of Atlantic swordfish, or its products, in any form, harvested by a vessel under the jurisdiction of Sierra Leone will be denied entry into the United States.

(b) All shipments of Atlantic bluefin tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Equatorial Guinea or Sierra Leone will be denied entry into the United States.

(c) All shipments of Atlantic bigeye tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Bolivia, Cambodia, Equatorial Guinea, Sierra Leone, or Georgia will be denied entry into the United States.

(d) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel that is required to be listed, but not listed on the ICCAT record of authorized vessels will be denied entry into the United States.

(e) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel listed on the ICCAT record as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(f) All shipments of tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(g) For the purposes of this section, it is a rebuttable presumption that any shipment containing swordfish, bluefin tuna, bigeye tuna, or their products offered for entry into the United States has been harvested by a vessel or vessels of the exporting nation.

■ 6. In § 635.71, paragraphs (a)(2), (a)(6), and (b)(26) are revised; and paragraphs (a)(41) through (a)(47) and paragraphs (b)(30) and (e)(16) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, SRP, display permit, or chartering permit on board the vessel, as specified in §§ 635.4 and 635.32.

* * * * *

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in §§ 635.5 and 635.32 or in the terms and conditions of a permit issued under § 635.4 or an exempted fishing permit, scientific research permit, display permit, or chartering permit issued under § 635.32.

* * * * *

(41) Fail to immediately notify NMFS upon the termination of a chartering arrangement as specified in § 635.5(a)(6).

(42) Count chartering arrangement catches against quotas other than those defined as the Contracting Party of which the chartering foreign entity is a member as specified in § 635.5(a)(6).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign entity, as specified in § 635.5(a)(6).

(44) Offload chartering arrangement catch in ports other than ports of the chartering Contracting Party of which the foreign entity is a member or offload catch without the direct supervision of the chartering foreign entity as specified in § 635.5(a)(6).

(45) Import or attempt to import tuna or tuna-like species harvested from the ICCAT convention area by a fishing vessel that is not listed in the ICCAT record of authorized vessels as specified in § 635.45(d).

(46) Import or attempt to import tuna or tuna-like species harvested by a fishing vessel on the ICCAT illegal, unreported, and unregulated fishing list as specified in § 635.45(e).

(47) Import or attempt to import tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing as specified in § 635.45(f).

(b)* * *

(26) Import a bluefin tuna or bluefin tuna product into the United States from Equatorial Guinea or Sierra Leone as specified in § 635.45.

* * * * *

(30) Import a bigeye tuna or bigeye tuna product into the United States from Bolivia, Cambodia, Equatorial Guinea, Sierra Leone, or Georgia as specified in § 635.45.

* * * * *

(e)* * *

(16) Import a swordfish or swordfish product into the United States from Sierra Leone as specified in § 635.45.

[FR Doc. 04–26719 Filed 12–3–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 233
Monday, December 6, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

DHS–2004–0016

Privacy Act of 1974: Implementation of Exemptions

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is concurrently establishing three new systems of records pursuant to the Privacy Act of 1974. In this proposed rulemaking, DHS proposes to exempt portions of two of those systems of records from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements.

DATES: Comments must be received on or before January 5, 2005.

ADDRESSES: You may submit comments, identified by docket number DHS–2004–0016, by one of the following methods:

- EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site.
- DHS has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET). DHS and its components (excluding the United States Coast Guard (USCG) and Transportation Security Administration (TSA)) will use the EPA Federal Partner EDOCKET system. The USCG and TSA (which are legacy Department of Transportation (DOT) agencies) will continue to use the DOT Docket Management System until full migration to the electronic rulemaking federal docket management system in 2005.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–772–5036 (This is not a toll-free number).
- Mail: Department of Homeland Security, Attn: Privacy Office/Nuala O'Connor Kelly, Chief Privacy Officer/202–772–9848, Washington, DC 20528.
- Hand Delivery / Courier: Department of Homeland Security, Attn: Privacy Office/Nuala O'Connor Kelly, Chief Privacy Officer/202–772–9848, Anacostia Navel Annex, 245 Murray Lane, SW, Building 410, Washington, DC 20528, 7:30 a.m. to 4 p.m.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nuala O'Connor Kelly, DHS Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528 by phone 202–772–9848 or facsimile 202–772–5036.

SUPPLEMENTARY INFORMATION:

Background

Concurrently with the publication of this notice of proposed rulemaking, the Department of Homeland Security (DHS) is publishing a Notice establishing three new systems of records that are subject to the Privacy Act of 1974, 5 U.S.C. 552a. DHS is proposing to exempt two of those systems, in part, from certain provisions of the Privacy Act. Those systems are the DHS Freedom of Information Act and Privacy Act Records System (DHS/ALL 001), which will contain records related to requests and appeals made under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act; and the Civil Rights and Civil Liberties Matters System (DHS–CRCL–001), which will cover allegations of abuses of civil rights and civil liberties that are submitted to and investigated by the DHS Officer for Civil Rights and Civil Liberties.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Homeland Security Act of 2002 requires the Secretary of DHS to appoint a senior official to oversee implementation of the Privacy Act and to undertake other privacy-related activities. Pub. L. 107–296, § 222, 116 Stat. 2135, 2155 (Nov. 25, 2002) (HSA). The systems of records being published today help to carry out the DHS Chief Privacy Officer's statutory activities.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed. DHS is claiming exemption from certain requirements of the Privacy Act. In the case of DHS/All 001, which consists of Freedom of Information Act and Privacy Act request, appeals and litigation records, it is possible that the information in the record system may be copied from record systems that pertain to national security or law enforcement matters. In such cases, allowing access to the information that is derived from these files could alert the subject of the information to an investigation of an actual or potential criminal, civil, or regulatory violation and reveal investigative interest on the part of DHS

or another agency. Disclosure of the information would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the information would also permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension, which undermines the entire system. This exemption is a standard law enforcement and national security exemption utilized by numerous law enforcement and intelligence agencies. Similarly, the records in the Civil Rights and Civil Liberties System of Records may reflect sensitive law enforcement or national security matters, the disclosure of which would result in comparable harms.

List of Subjects in 6 CFR Part 5

Classified information; Courts; Freedom of information; Government employees; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add Appendix C to Part 5 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt from the Privacy Act

This Appendix implements provisions of the Privacy Act of 1974 that permit the Department of Homeland Security (DHS) to exempt its systems of records from provisions of the Act. During the course of normal agency operations, exempt materials from other systems of records may become part of the records in these and other DHS systems. To the extent that copies of records from other exempt systems of records are entered into any DHS system, DHS hereby claims the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule.

Portions of the following DHS systems of records are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552(j) and (k):

1. DHS/ALL 001, Department of Homeland Security (DHS) Freedom of Information Act (FOIA) and Privacy Act (PA) Record System allows the DHS and its components to maintain and retrieve FOIA and Privacy Act files by personal identifiers associated with the persons submitting requests for information under each statute. Pursuant to exemptions (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I). Exemptions from the particular subsections are justified, on a case by case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension, which undermines the entire system.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS or another agency. Access to the records would permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. The information contained in the system may also include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information also could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced, occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of federal laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because portions of this system are exempt from the access provisions of subsection (d).

2. DHS–CRCL–001, Civil Rights and Civil Liberties Matters, which will cover allegations of abuses of civil rights and civil liberties that are submitted to the Office of CRCL. Pursuant to exemptions (k)(1), (k)(2) and (k)(5) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I). Exemptions from the particular subsections are justified, on a case by case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS or another agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension, which undermines the entire system.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Access to the records would permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. The information contained in the system may also include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information also could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced, occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of federal laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsection (d).

Dated: December 1, 2004.

Nuala O'Connor Kelly,

Chief Privacy Officer.

[FR Doc. 04–26743 Filed 12–3–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[REG–145988–03]

RIN 1545–BC60

Predeceased Parent Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed rulemaking relating to the predeceased parent rule.

DATES: The public hearing originally scheduled for Tuesday, December 14, 2004, at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor, Procedures and Administration, Publications & Regulations Branch, at (202) 622–3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, September 3, 2004 (69 FR 53862), announced that a public hearing was scheduled for December 14, 2004 at 10 a.m., in the auditorium of the Internal Revenue Service building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 2651 of the Internal Revenue Code.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of topics to be addressed by November 23, 2004. As of November 29, 2004, no one has requested to speak. Therefore, the public hearing scheduled for December 14, 2004 is cancelled.

Guy R. Traynor,

Federal Register Liaison, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures & Administration).

[FR Doc. 04–26746 Filed 12–3–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPT–2004–0085; FRL–7688–1]

RIN 2070–AJ02

Certain Polybrominated Diphenylethers; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for tetrabromodiphenyl ether (CAS No. 40088–47–9; Benzene, 1,1′-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether (CAS No. 32534–81–9; Benzene, 1,1′-oxybis-, pentabromo deriv.), hexabromodiphenyl ether (CAS No. 36483–60–0; Benzene, 1,1′-oxybis-, hexabromo deriv.), heptabromodiphenyl ether (CAS No. 68928–80–3; Benzene, 1,1′-oxybis-, heptabromo deriv.), octabromodiphenyl ether (CAS No. 32536–52–0; Benzene, 1,1′-oxybis-, octabromo deriv.), or nonabromodiphenyl ether (CAS No. 63936–56–1; Benzene, pentabromo(tetrabromophenoxy)-), and any combination of these substances resulting from a chemical reaction. This proposed rule would require manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of any one or more of these chemical substances on or after January 1, 2005 for any use. EPA believes that this action is necessary because these chemical substances may be hazardous to human health and the environment. The required notice would provide EPA with the opportunity to evaluate an intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

DATES: Comments, identified by docket identification (ID) number OPPT–2004–0085, must be received on or before February 4, 2005.

ADDRESSES: Submit your comments, identified by docket (ID) number OPPT–2004–0085, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Website: http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: oppt.ncic@epa.gov*.
- *Mail:* Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office, EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number OPPT–2004–0085. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPPT–2004–0085. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (303) 312–6700; e-mail address: *moss.kenneth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) one or more of the following polybrominated diphenyl ethers (PBDEs): tetrabromodiphenyl ether (''tetraBDE'') (CAS No. 40088–47–9; Benzene, 1,1′-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether (''pentaBDE'') (CAS No. 32534–81–9; Benzene, 1,1′-oxybis-, pentabromo deriv.), hexabromodiphenyl ether (''hexaBDE'') (CAS No. 36483–60–0; Benzene, 1,1′-oxybis-, hexabromo deriv.), heptabromodiphenyl ether (''heptaBDE'') (CAS No. 68928–80–3; Benzene, 1,1′-oxybis-, heptabromo deriv.), octabromodiphenyl ether (''octaBDE'') (CAS No. 32536–52–0; Benzene, 1,1′-oxybis-, octabromo deriv.), or nonabromodiphenyl ether (''nonaBDE'') (CAS No. 63936–56–1; Benzene, pentabromo(tetrabromophenoxy)-), and any combination of these substances resulting from a chemical reaction. Persons who intend to import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 127.28. Those persons must certify that they are in compliance with the SNUR requirements (see TSCA section 13 (15 U.S.C. 2612) and 19 CFR 12.118 through 12.127 and 127.28). The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after January 5, 2005 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D. Potentially affected entities may include, but are not limited to:

- Manufacturers (defined by statute to include importers) of PBDEs (NAICS 325 and 324110), e.g. chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 721.5 for SNUR-related obligations. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 721 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

C. How Do I Submit Confidential Business Information?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

This proposed rule, when finalized, would require persons to notify EPA at least 90 days before commencing the manufacture (including importation) of tetrabromodiphenyl ether (''tetraBDE'') (CAS No. 40088–47–9; Benzene, 1,1′-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether (''pentaBDE'') (CAS No. 32534–81–9; Benzene, 1,1′-oxybis-, pentabromo deriv.), hexabromodiphenyl ether (''hexaBDE'') (CAS No. 36483–60–0;

Benzene, 1,1′-oxybis-, hexabromo deriv.), heptabromodiphenyl ether (''heptaBDE'') (CAS No. 68928–80–3; Benzene, 1,1′-oxybis-, heptabromo deriv.), octabromodiphenyl ether (''octaBDE'') (CAS No. 32536–52–0; Benzene, 1,1′-oxybis-, octabromo deriv.), or nonabromodiphenyl ether (''nonaBDE'') (CAS No. 63936–56–1; Benzene, pentabromo(tetrabromophenoxy)-), and any combination of these substances resulting from a chemical reaction, for any use on or after January 1, 2005.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use (15 U.S.C. 2604 (a)(1)(B). The mechanism for reporting under this requirement is established under 40 CFR 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR, when finalized, would be required to comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1); the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5); and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA sections 5(e), 5(f), 6, or 7, if appropriate, to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which appear at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

III. Summary of the Proposed Rule

PBDEs are members of a broader class of brominated chemicals used as flame retardants; these are called brominated flame retardants, or BFRs. There are commercial PBDE products with different average amounts of bromination: penta-, octa-, and decaBDE. These chemicals are major components of commercial products often used as fire retardants in furniture foam (pentaBDE), plastics for personal computers and small appliances (octaBDE), and plastics for TV cabinets, consumer electronics, wire insulation, and backcoatings for draperies and upholstery (decabromodiphenylether, or decaBDE). The value of these chemicals is their ability to slow ignition and rate of fire growth, and as a result increase available escape time in the event of a fire involving the above products.

Although use of these chemicals is intended to save lives and property, there have been unintended consequences, such as, releases to and accumulation in the environment. Environmental monitoring programs in Europe, Asia, North America, and the Arctic have detected several PBDEs in human breast milk, fish, aquatic birds, and elsewhere in the environment. The human health toxicological endpoints of concern for these chemical substances are liver toxicity, thyroid toxicity, and neurodevelopmental toxicity. More needs to be understood about the environmental fate and the exposure pathways that lead to PBDE presence in wildlife and people. The lower brominated PBDEs (tetraBDE, pentaBDE, and hexaBDE) found in the commercial pentaBDE and octaBDE products are the congeners most often detected in the environment and for which human health and environmental concerns are greater (see Unit IV.B. and C.). These factors, taken together, raise concerns for potential adverse effects in people and wildlife over time if these substances should continue to be produced, released, and built up in the environment.

EPA believes that the commercial products pentaBDE and octaBDE are manufactured in the United States (U.S.) only by Great Lakes Chemical Corporation. Great Lakes has committed to phase-out these chemicals voluntarily by discontinuing their manufacture by the end of 2004 (Ref. 1). EPA is aware of no ongoing production of tetra-, hexa-, hepta- or nonaBDE except as components of the commercial pentaBDE and octaBDE commercial products. EPA believes that any manufacture or import of these chemicals occurring after Great Lakes' phase-out dates would increase the magnitude and duration of exposure to these chemicals. Therefore, EPA is proposing to designate as a significant new use any manufacture or import of the chemical substances listed in Unit II.A. for any use on or after January 1, 2005. Because decaBDE is not included in the voluntary phase-out and therefore remains in commerce after January 1, 2005, it would not be subject to this proposed rule.

Given that, based on information available to EPA, no companies other than Great Lakes Chemical Corporation are currently manufacturing or importing the commercial pentaBDE or octaBDE products, or the PBDE congeners that comprise these products, and given the negative commercial and regulatory environment associated with these chemicals, EPA believes it is unlikely that companies would incur the costs associated with establishing new manufacturing capacity for these chemicals in order to enter this market. This proposed rule, when finalized, would require persons who intend to manufacture or import the chemical substances listed in Unit II.A. to submit a SNUN at least 90 days before commencing the manufacture or importation of any of these chemicals for any use on or after January 1, 2005. The required notice would provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that use before it occurs. In the event that the phase-out of these chemicals does not progress as described in this proposed rule, EPA may pursue additional regulatory action as appropriate under TSCA sections 4, 6, and 8.

IV. Overview of PBDEs

See Unit XI. for selected primary references for the information summarized in this unit. For a more complete treatment of PBDEs and comprehensive lists of relevant articles, see the risk assessments developed under EPA's Voluntary Children's Chemical Evaluation Program (VCCEP)

and the reports from the VCCEP Peer Consultation meetings held for these chemicals (Refs. 2–7), in addition to the overview articles (Refs. 8 and 9).

A. Defining the PBDEs Subject to this Proposed SNUR

The chemical substances that are subject to this proposed rule are listed on the TSCA Inventory. Each individual chemical substance is actually a reaction product of diphenyl ether with a brominating agent. The different products, each having different numbers of bromines depending on reaction stoichiometry, are a normal distribution of possible polybrominated diphenyl ethers. For example, the commercially available ''pentaBDE'' product, sold under the single CAS No. (32534–81–9), is predominantly an almost equal mixture of tetraBDE and pentaBDE congeners, along with smaller amounts of the higher brominated congeners. It is a reaction product combination of aromatic brominated compounds in which 4–6 hydrogen atoms in the diphenyl oxide structure are replaced by bromine atoms (Refs. 2 and 10). The ''octaBDE'' product (CAS No. 32536–52–0) consists predominantly of heptaBDE and octaBDE congeners with small amounts of hexa- and nonaBDE. It is a reaction product combination of aromatic brominated compounds in which 6–9 hydrogen atoms in the diphenyl oxide structure are replaced by bromine atoms (Refs. 3 and 10). In order to insure that the PBDEs listed in Unit II.A. would be subject to review before manufacture or import for commercial purposes, this proposed rule would require the reporting for any manufacture or importation of these chemical substances.

B. Health and Environmental Effects

Existing health hazard information on the subject chemical substances is incomplete (Ref. 8). The currently available toxicity test data indicate the potential for adverse effects in humans, especially for lower brominated congeners (Refs. 8 and 9). The major findings from subchronic and chronic pentaBDE toxicity studies in rodents are induction of hepatic enzymes and effects on thyroid homeostasis. The effects on thyroid homeostasis have raised concerns for the potential for developmental neurotoxicity (Ref. 5). The toxicity database for octaBDE is similar to that of pentaBDE, but less complete (Ref. 6).

With regards to environmental hazards of the subject chemical substances, the European Union (EU) risk assessment for pentaBDE concludes for aquatic and terrestrial ecosystems that there is a need for specific measures to limit risks. This conclusion is reached because of ''concerns for effects on the local aquatic (sediment) and terrestrial environment as a consequence of exposure arising from polyurethane foam production [and] concerns for secondary poisoning to the environmental spheres mentioned in Unit IV.B. both locally and regionally as a consequence of exposure arising from production and/or use of polyurethane foams.'' (Ref. 11). For octaBDE, the EU concluded that there is a risk of ''secondary poisoning via the earthworm route for the hexabromodiphenyl ether component in the commercial octabromodiphenyl ether product from the use in polymer applications.'' There was a need identified for further monitoring to determine whether findings in top predators (including birds' eggs) is a widespread or localized phenomenon, and for avian reproduction tests (Ref. 12).

C. Exposure and Environmental Fate Data

Current information suggests strongly that PBDEs as a class are persistent and may bioaccumulate. Environmental monitoring programs in Europe, Asia, North America, and the Arctic have detected many PBDE congeners in human blood and breast milk, fish, aquatic birds, and elsewhere in the environment (Refs. 9, 13, 14, 15, 16, 17, and 18). This widespread presence, combined with persistence, bioaccumulative potential, and toxicity from low level exposures, raises concerns for potential adverse effects to people and wildlife over time should the chemical substances that are subject to this proposed rule continue to be produced, released, and accumulated in the environment.

Of the congeners found in the commercial products, tetraBDE, pentaBDE, and hexaBDE are the PBDEs most frequently detected in wildlife and humans (Refs. 8 and 9). The octanol-water partition coefficient, which is an important property in determining the environmental fate of hydrophobic organic chemicals, particularly in biota, has been measured for a number of PBDEs, and shown to be in the range of optimum bioaccumulation potential (Ref. 19). With the present data, the Agency can only speculate on environmental transport and partitioning of PBDEs in general and specifically regarding the chemical substances that are subject to this proposed rule. While the exact mechanisms or pathways by which the various PBDE congeners end up in the environment and humans are not known yet, they could include direct releases from manufacturing or processing of the chemicals into products like plastics or textiles, aging and wear of these consumer products (Ref. 20), photolytic breakdown of higher brominated congeners (Ref. 21), and direct exposure during use or via indoor air or house dust (Refs. 22 and 23), as well as bioaccumulation up the food chain (Ref. 24). The small amount of environmental information on octaBDE shows it does not readily degrade, although an exception is in fish, where there is evidence that octaBDE could have the potential to be metabolized to pentaBDE (Ref. 25).

D. Use Information

The chemical substances subject to this proposed rule, listed in Unit II.A., are the commercial products pentaBDE and octaBDE, and other PBDE congeners that comprise these products and are separately listed on the TSCA Inventory. PentaBDE (often formulated with nonhalogenated organophosphates) has been widely used in formulations for flexible polyurethane foams used in upholstered products ranging from home furniture to seats in airplanes and automobiles. OctaBDE has been primarily used as an additive to a type of plastic known as acrylonitrile-butadiene-styrene (ABS), used in housings for office and medical electronics, the interior and exterior trim of automobiles, telephone handsets, and other products. It is also incorporated into resins (polyamide and polybutylene terephthalate) in the manufacture of electrical connectors and components and automotive interior parts.

World-wide demand for pentaBDE and octaBDE in 2001 was estimated to be 7,500,000 and 3,790,000 kilograms (kg), respectively; demand for these chemicals in the Americas was 7,100,000 kg for pentaBDE and 1,500,000 kg for octaBDE (Ref. 26). On November 3, 2003, Great Lakes Chemical Corporation, the only U.S. manufacturer of pentaBDE and octaBDE, announced a voluntary phase-out of both those commercial products by the end of 2004. According to the information currently available to EPA, Great Lakes is the sole U.S. manufacturer of commercial pentaBDE and octaBDE and EPA also understands that currently there is no import of these commercial products into the U.S. Furthermore, based on available information, none of the other PBDE congeners subject to this proposed rule are currently manufactured or imported into the U.S.

V. Objectives and Rationale of the Rule

As summarized in Unit IV., EPA has concerns regarding the environmental fate and the exposure pathways that lead to PBDE presence in wildlife and people, and the persistence, bioaccumulation, and toxicity (PBT) potential of pentaBDE and octaBDE. Great Lakes Chemical Corporation, the sole manufacturer of these chemicals in the U.S., has chosen voluntarily to discontinue their manufacture for all uses by December 31, 2004. With Great Lakes Chemical Corporation's exit from the market, EPA believes that all U.S. manufacture and import of these chemicals likely will cease. However, EPA is concerned that manufacture or import could be reinitiated in the future, and wants the opportunity to evaluate and control, if appropriate, exposures associated with those activities. Based on the current situation, including substantial production volume, number of uses, potential for widespread release and exposure, as well as the PBT nature of the chemical substances, any new manufacture or import after January 1, 2005 is expected to significantly increase exposures after manufacture and import are discontinued, over that which could otherwise exist. The notice that would be required by this proposed SNUR would provide EPA with the opportunity to evaluate activities associated with a significant new use as proposed herein and an opportunity to protect against unreasonable risks, if any, from exposure to the substances.

Based on these considerations, EPA wants to achieve the following objectives with regard to the significant new uses that are designated in this proposed rule. EPA wants to ensure that:

1. EPA would receive notice of any person's intent to manufacture or import the chemical substances subject to this proposed rule for a designated significant new use before that activity begins.

2. EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or importing these chemical substances for a significant new use.

3. EPA would be able to regulate prospective manufacturers and importers of these chemical substances before a significant new use occurs, provided such regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.

VI. Significant New Use Determination

In making a determination that a use of a chemical substance is a significant new use, the Agency must consider all relevant factors, including those listed in section 5(a)(2) of TSCA. Those factors are:

- The projected volume of manufacturing and processing of the chemical substance.
- The extent to which the use changes the type or form of exposure to human beings or the environment to a chemical substance.
- The extent to which the use changes the magnitude and duration of exposure to human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

Given that no companies other than Great Lakes Chemical Corporation are currently manufacturing or importing commercial pentaBDE or octaBDE in the U.S., the negative commercial and regulatory environment associated with these chemicals (including the EU ban on marketing and use of pentaBDE and octaBDE (Ref. 27) and similar restrictions enacted by certain States in the U.S. (Ref. 28)), and the expectation that viable substitutes will be available including those being considered in the Design for Environment Furniture Flame Retardancy Partnership (Ref. 29), EPA believes it is unlikely that companies would incur the costs associated with establishing new manufacturing capacity for these chemicals in order to enter this market. With Great Lakes Chemical Corporation's exit from the market, EPA believes that all U.S. manufacture and import of these chemicals likely will cease and that any new manufacture or import, for any use, subsequent to Great Lakes Chemical Corporation's December 31, 2004 phase-out date would result in a significant increase in the magnitude and duration of exposures to humans and the environment over that which would otherwise exist. Based on these considerations, EPA has determined that any manufacture or import of the chemical substances listed in Unit II.A. for any use on or after January 1, 2005 is a significant new use.

VII. Alternatives/Other Options Considered

Before proposing this SNUR, EPA considered the following alternative regulatory actions for the chemical substances that are the subject of this proposed rule.

1. *Promulgate a TSCA section 8(a) reporting rule.* Under a TSCA section 8(a) rule, EPA could generally require any person to report information to the Agency when they intend to manufacture, import or process the chemical substances listed in Unit II.A. However, the use of TSCA section 8(a) rather than the SNUR authority, would not provide the opportunity for EPA to review human and environmental hazards and exposures associated with the new uses of these substances and, if necessary, to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about the chemical substances and its interest in having the opportunity to review these substances and regulate them as appropriate, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for certain PBDEs would not meet all of EPA's regulatory objectives.

2. *Regulate the chemical substances subject to this proposed rule under TSCA section 6.* EPA must regulate under TSCA section 6 if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or mixture ''presents or will present'' an unreasonable risk of injury to human health or the environment. Based on EPA's findings that after December 31, 2004 there would be no manufacture or import of the chemical substances subject to this proposed rule, EPA concluded that risk management action under TSCA section 6 is not necessary at this time. This proposed SNUR would allow the Agency to address the potential risks associated with any intended significant new use of these chemical substances.

3. *Require persons that import certain PBDEs as part of articles to comply with the requirements of this proposed SNUR.* Under the general SNUR exemption provisions at 40 CFR 721.45, a person that imports or processes a substance covered by a SNUR identified in subpart E of part 721 is not generally subject to the notification requirements of § 721.25 for that substance, if the person imports or processes the substance as part of an article. See 40 CFR 721.45(f). EPA considered requiring persons that import (processors are not covered by this proposed SNUR) the PBDEs subject to this proposed rule as part of articles to comply with the requirements of this proposed SNUR, due to concerns that exempting articles would render the SNUR less effective

because of the possibility that upholstered products or plastics-containing articles treated with these PBDEs could be imported. The current import status of articles treated with PBDEs, i.e., whether or not import of these articles is presently ongoing, is not known at this time. However, given the negative commercial and regulatory environment associated with these chemicals (including the EU ban on marketing and use of pentaBDE and octaBDE, the EU ban on placing on the market articles containing these substances (Ref. 27)), similar restrictions enacted by certain states in the U.S. (Ref. 28), and the expectation that viable substitutes will be available, EPA believes it would be unlikely that these chemical substances will be imported as part of articles. Based on this belief, and the resultant low likelihood of exposure to pentaBDE and octaBDE imported as part of an article, EPA is not proposing to amend the general SNUR exemption provisions for the purpose of this proposed SNUR. EPA is specifically seeking comments on the issue of whether persons that import the chemical substances listed in Unit II.A. as part of articles should be subject to the reporting requirements of this proposed SNUR.

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA believes that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish notification requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the proposed rule became final, and then argue that the use was ongoing as of the effective date of the final rule.

Any person who, after publication of this proposed SNUR, begins commercial manufacture or import of the chemical substances listed in Unit II.A. must stop such activity before the effective date of the final rule. Persons who cease those activities will have to meet all SNUR notice requirements and wait until the end of the notice review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who begin commercial manufacture or import of the chemical substances listed in Unit II.A. between the proposal and the effective date of the final SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons would be considered to have met the requirements of the final SNUR for those activities.

IX. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require the development of any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25).

However, in view of the potential health or environmental risks posed by any manufacture or importation of the chemical substances listed in Unit II.A., EPA would recommend in the final rule that potential SNUN submitters include data that would permit a reasoned evaluation of risks posed by these chemical substances during their manufacture, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN for these substances, and, for commercial pentaBDE and octaBDE, to take advantage of the data needs assessments as reviewed under the Agency's VCCEP (see VCCEP Peer Consultation meeting reports - Refs. 5 and 6 - and any forthcoming Agency decision under the VCCEP process). As part of this optional pre-notice consultation, EPA would discuss specific data it believes are necessary to evaluate a significant new use. EPA also encourages SNUN submitters to provide all available information that is relevant to assessing the potential for environmental or consumer exposure, as well as information on risks posed by these substances compared to risks posed by possible substitutes. A SNUN submitted without sufficient data to reasonably evaluate risks posed by a significant new use of the chemical substances listed in Unit II.A. may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with these chemicals.

X. Economic Considerations

EPA has evaluated the potential costs of establishing a SNUR for the chemical substances listed in Unit II.A. These potential costs are related to the submission of SNUNs, the export notification requirements of TSCA section 12(b) and the development of test data. If the firm undertakes testing to support the submission of a SNUN, costs could range from roughly $339,000 to over $1.4 million per chemical, but could be substantially lower if not all recommended tests are performed. EPA notes that, with the possible exception of export notification requirements, the costs of submission of SNUNs will not be incurred by any company unless that company decides to pursue a significant new use as defined in this SNUR. The Agency's economic analysis is available in the public docket for this proposed rule (Ref. 30).

A. SNUNs

The Agency has analyzed the potential costs of compliance with the proposed SNUR (Ref. 30). EPA's complete economic analysis is available in the public docket. The Agency has estimated the average cost of compliance with the SNUR per chemical (e.g., cost of submitting a SNUN) to be $6,956 based on 105 burden hours or a total cost of $13,912 or 210 hours for both chemicals. These estimates do not include the costs of testing or submission of other information to permit a reasoned evaluation of potential risks (see Unit IX.).

B. Export Notification

As noted in Unit II.C. of this document, persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)). These provisions require that, for chemicals subject to a proposed or final SNUR, a company notify EPA of the first shipment to a particular country in a calendar year of an affected chemical substance. EPA estimated that the one-time cost of preparing and submitting an export notification to be $89.29. The total costs of export notification will vary per chemical, depending on the number of required notifications (i.e., number of countries to which the chemical is exported).

EPA is unable to estimate the total number of TSCA section 12(b) notifications that will be received as a result of this proposed SNUR, or the total number of companies that will file these notices. However, EPA expects that the total cost of complying with the export notification provisions of TSCA section 12(b) will be limited based on historical experience with TSCA section 12(b) notifications and the fact that no companies have currently been identified that currently market any of the chemical substances that are the subject of this proposed rule commercially. If companies were to

manufacture for export only any of the chemical substances covered by this proposed SNUR, such companies would incur the minimal costs associated with export notification despite the fact they would not be subject to the SNUR notification requirements. See TSCA section 12(a) and 40 CFR 721.45(g). EPA is not aware of any companies in this situation.

XI. References

These references have been placed in the public docket that was established under docket ID number OPPTS–2004–0085 for this rulemaking.

1. Noonan, Anne P. Phase-Out Plan for Pentabromodiphenyl-oxide and Octabromodiphenyl-oxide Products. Great Lakes Chemical Corporation. West Lafayette, IN. April 8, 2004.

2. Voluntary Children's Chemical Evaluation Program (VCCEP) Tier 1 Assessment of the Potential Health Risks to Children Associated with Exposure to Commercial for Pentabromodiphenyl ether (CAS No. 32534–81–9), April 21, 2003; Great Lakes Chemical Corporation.

3. Voluntary Children's Chemical Evaluation Program (VCCEP) Tier 1 Assessment of the Potential Health Risks to Children Associated with Exposure to Commercial for Octabromodiphenyl ether (CAS No. 32536–52–0), April 21, 2003; Great Lakes Chemical Corporation.

4. Voluntary Children's Chemical Evaluation Program (VCCEP) Data Summary, Decabromodiphenyl ether (CAS No. 1163–19–5), December 17, 2002; American Chemistry Council's Brominated Flame Retardant Industry Panel.

5. Report of the Peer Consultation Meeting (June 3 and 4, 2003) on Pentabromodiphenyl ether; Great Lakes Chemical Corporation for the Voluntary Children's Chemical Evaluation Program (VCCEP); January 22, 2004.

6. Report of the Peer Consultation Meeting (June 3 and 4, 2003) on Octabromodiphenyl ether; Great Lakes Chemical Corporation for the Voluntary Children's Chemical Evaluation Program (VCCEP); January 22, 2004.

7. Report of the Peer Consultation Meeting (April 2 and 3, 2003) on Decabromodiphenyl ether; American Chemistry Council's Brominated Flame Retardant Industry Panel for the Voluntary Children's Chemical Evaluation Program (VCCEP); September 30, 2003.

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11. Risk-Assessment Report Vol. 05, August 2000 on: diphenyl ether, pentabromo derivative, CAS No.: 32534–81–9, EINECS #: 251–084–2. Publication: EUR 19730 EN. See *http://ecb.jrc.it/existing-chemicals/*, ''penta_bdereport015.''

12. Risk-Assessment Report Vol. 16, 2003 on: diphenyl ether, octabromo derivativeCAS No.: 32536–52–0, EINECS #: 251–087–9. Publication: EUR 20403 EN. See *http://ecb.jrc.it/existing-chemicals/*, ''octareport014.''

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15. Lindberg P, Sellstrom U, Haggberg L, deWit CA. 2004. Higher brominated diphenyl ethers and hexabromocyclododecane found in eggs of peregrine falcons (*Falco peregrinus*) breeding in Sweden. Environ. Sci. Technol. 38:93–96.

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28. California Bill AB 302, bill text. ''An act to add Chapter 10 (commencing with Section 108920) to Part 3 of Division 104 of the Health and Safety Code, relating to toxic substances.'' Signed by the California Governor on August 9, 2003.

29. Design for the Environment Program, USEPA. September 2004. Environmentally Preferable Approaches for Achieving Fire Furniture Safety Standards.

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XII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a ''significant regulatory action'' subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188.07). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this proposed SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities will be engaged in such activity on or after January 1, 2005. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 10 notices per year. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit X.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented it's general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this proposed rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children. Although the chemicals that are addressed in this significant new use rule might present such risks to children, significant new use rules are administrative actions that require chemical manufacturers to submit a significant new use notice to EPA before a chemical may be manufactured or imported. Therefore, this action does not in and of itself affect children's health.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply,*

Distribution, or Use (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

L. Executive Order 12988: Civil Justice Reform

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Premanufacture notification, Reporting and recordkeeping requirements.

Dated: November 30, 2004.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.10000 to subpart E to read as follows:

§ 721.10000 Certain polybrominated diphenylethers.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified as tetrabromodiphenyl ether (CAS No. 40088–47–9; Benzene, 1,1′-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether (CAS No. 32534–81–9; Benzene, 1,1′-oxybis-, pentabromo deriv.), hexabromodiphenyl ether (CAS No. 36483–60–0; Benzene, 1,1′-oxybis-, hexabromo deriv.), heptabromodiphenyl ether (CAS No. 68928–80–3; Benzene, 1,1′-oxybis-, heptabromo deriv.), octabromodiphenyl ether (CAS No. 32536–52–0; Benzene, 1,1′-oxybis-, octabromo deriv.), and nonabromodiphenyl ether (CAS No. 63936–56–1; Benzene, pentabromo(tetrabromophenoxy)-), and any combination of these substances resulting from a chemical reaction are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is manufacture or import for any use on or after January 1, 2005.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for section 721.5(a)(2). A person who intends to manufacture or import for commercial purposes the substances identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

[FR Doc. 04–26731 Filed 12–1–04; 2:54 pm]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT65

Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), provide notice that the public comment period for the proposed rule to establish the Pine Island-Estero Bay Manatee Refuge in Lee County, Florida, is reopened to allow all interested parties to submit written comments on the proposed rule. We are reopening the public comment period to accommodate those individuals and communities that are continuing to recover from the effects of both Hurricane Charley and Hurricane Frances. Comments previously submitted during the initial comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal.

DATES: The original comment period closed on October 5, 2004. The comment period is hereby reopened until February 2, 2005. Comments from all interested parties must be received by the closing date. Any comments received after the closing date may not be considered in the final decision on this proposal. Furthermore, the public hearing that was originally scheduled for Wednesday, September 8, 2004, has been rescheduled for Wednesday, January 12, 2005, from 6:30 p.m. to 9:30 p.m. in Fort Myers, Florida. See additional information on the public comment process in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: A formal public hearing will be held on Wednesday, January 12, 2005, from 6:30 p.m. to 9:30 p.m. at the Harborside Convention Hall, 1375 Monroe Street, Fort Myers, Florida.

If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, South Florida Field Office, U.S. Fish and Wildlife Service, Attn: Proposed Manatee Refuge, 1339 20th Street, Vero Beach, Florida 32960.

2. You may hand-deliver written comments to our South Florida Field Office, at the above address, or fax your comments to (772) 562–4288.

3. You may send comments by electronic mail (e-mail) to *verobeach@fws.gov.* For directions on how to submit electronic comment files, see the ''Public Comments Solicited'' section.

We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Jay Slack or Kalani Cairns (*see* **ADDRESSES** section), telephone (772) 562–3909; or visit our Web site at *http://verobeach.fws.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why this area, particularly the waters known as Long Cut and Short Cut as well as any shallow water embayments within the proposed area, should or should not be designated as manatee refuges, including data in support of these reasons;

2. Current or planned activities in the subject areas and their possible effects on manatees;

3. Any foreseeable economic or other impacts resulting from the proposed designations;

4. Potential adverse effects to the manatee associated with designating manatee protection areas for the species; and

5. Any actions that could be considered in lieu of, or in conjunction with, the proposed designations that would provide comparable or improved manatee protection.

We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m. at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling (772) 562–3909 or from our Web site at *http://verobeach.fws.gov.*

Comments submitted electronically should be embedded in the body of the e-mail message itself or attached as a text-file (ASCII) and should not use special characters and encryption. Please also include ''Attn: RIN 1018–AT65,'' your full name, and return address in your e-mail message. Comments submitted to *verobeach@fws.gov* will receive an automated response confirming receipt of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our South Florida Field Office (*see* **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Our final determination on the proposed rule will take into consideration comments and any additional information received by the date specified above. Previous comments and information submitted during the original comment period need not be resubmitted. The comment period is reopened until February 2, 2005.

Background

Manatees are a federally protected under both the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA). Currently, collisions with watercraft probably constitute the greatest human-caused threat to the species. Historically, these collisions are responsible for about 25 percent of all manatee deaths and about 80 percent of all human-caused mortality in manatees.

In November 2002, a judge in Florida's 20th Judicial Circuit Court ruled that five State-designated manatee protection zones were invalid because the rule for four regulated areas did not meet the State standard for frequency of sightings and unduly interfered with the rights of voters. Since January 2004, the Florida Fish and Wildlife Conservation Commission have recovered four manatee carcasses in the affected areas. Subsequent necropsies reveal these animals died of wounds suffered from a boat collision. There have been at least 18 boat-related manatee deaths in these five areas since 1999.

For these reasons, we believe that there is imminent danger of take of one or more manatees in these areas and the designation of a manatee refuge is necessary to prevent such taking. Manatees utilize these areas, there is a history of take at these sites, future take is imminent, protection measures are insufficient, and we do not anticipate any alternative protection measures being enacted by State or local government in sufficient time to reduce the likelihood of take occurring.

On April 7, 2004 we published an emergency designation of this area. This designation expired on August 5, 2004. The second emergency designation will be in effect until December 4, 2004. At that time, we plan to publish a third emergency designation in order to have adequate time to complete the normal rulemaking process (currently underway). Due to recent hurricanes in the area of Lee County, we are reopening the public comment period to allow all interested parties to provide comments.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.

Author

The primary author of this document is Kalani Cairns (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

Dated: November 4, 2004.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 04–26709 Filed 12–3–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. I.D. 041110317–4317; I.D. 110404B]

RIN 0648–AR51

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2005 and 2006 Summer Flounder Specifications; 2005 Scup and Black Sea Bass Specifications; 2005 Research Set-Aside Projects

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2005 and 2006 summer flounder fisheries, and for the 2005 scup and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming fishing year for each of the species and to provide an opportunity for public comment. This proposed rule also would make changes to the regulations regarding the commercial scup fishery. The intent of this action is to establish harvest levels and other measures to attain the target fishing mortality rates (F) or exploitation rates specified for these species in the FMP, and to reducing bycatch and improve the efficiency of the commercial scup fishery. NMFS has conditionally approved three research projects for the harvest of the portion of the quota that has been recommended by the Mid-Atlantic Fishery Management Council (Council) to be set aside for research purposes. In anticipation of receiving applications for Experimental Fishing Permits (EFPs) to conduct this research, the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the activities authorized under the EFPs issued in response to the approved Research Set-Aside (RSA) projects would be consistent with the goals and objectives of the FMP. However, further review and consultation may be necessary before a final determination is made to issue any EFP.

DATES: Comments must be received on or before December 21, 2004.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the specifications are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The specifications document is also accessible via the Internet at *http://www.nero.nmfs.gov*. Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments—Summer Flounder, Scup, and Black Sea Bass Specifications.'' Comments may also be sent via facsimile (fax) to 978–281–9135, or via e-mail to the following address: *FSB2005@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on Summer Flounder, Scup, and Black Sea Bass Specifications.'' Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Council, in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (Paralichthys dentatus) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (Stenotomus chrysops) and black sea bass (Centropristis striata) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The regulations outline the process for specifying annually the catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F or exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP.

As required by the FMP, a Monitoring Committee for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, is required to review the best available scientific information and to recommend catch limits and other management measures that will achieve the target F or exploitation rate for each fishery. Consistent with the implementation of Framework Adjustment 5 to the FMP (69 FR 62818, October 28, 2004), each Monitoring Committee meets annually to recommend the Total Allowable Landings (TAL), unless the TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the Monitoring Committees' recommendations and any public comment and make their own recommendations. While the Board action is final, the Council's recommendations must be reviewed by NMFS to assure that they comply with FMP objectives. The Council and Board made their recommendations at a joint meeting held August 11, 2004.

Explanation of RSA

In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the TAL for each of the species to be set aside each year for scientific research purposes. For the 2005 fishing year, a Request for

Proposals was published to solicit research proposals based upon the research priorities that were identified by the Council (69 FR 10990, March 9, 2004). The deadline for submission of proposals was April 8, 2004. Three applicants were notified in June 2004 that their research proposals had received favorable preliminary review. For informational purposes, this proposed rule includes a statement indicating the amount of quota that has been preliminarily set aside for research purposes, as recommended by the Council and Board, and a brief description of the RSA projects. The RSA amounts may be adjusted in the final rule establishing the annual specifications for the summer flounder, scup, and black sea bass fisheries or, if the total amount of the quota set-aside is not awarded, NMFS will publish a notice in the **Federal Register** to restore the unused RSA amount to the applicable TAL.

For 2005, three RSA projects have been conditionally approved by NMFS and are currently awaiting notice of award. The total RSA quotas, approved by the Council and Board, allocated for all three projects are: 353,917 lb (161 mt) of summer flounder; 303,675 lb (138 mt) of scup; 109,500 lb (50 mt) of black sea bass; 562,350 lb (255 mt) of Loligo squid; and 297,750 lb (135 mt) of bluefish.

The University of Rhode Island submitted a proposal to conduct a second year of work in a fishery-independent scup survey that would utilize unvented fish traps fished on hard bottom areas in southern New England waters to characterize the size composition of the scup population. Survey activities would be conducted from May 1 through November 8, 2005, at six rocky bottom study sites located offshore, where there is a minimal scup pot fishery and no active trawl fishery. Up to two vessels would conduct the survey. Sampling would occur off the coasts of Rhode Island and southern Massachusetts. The RSA allocated for this project is 18,000 lb (8 mt) of black sea bass and 63,675 lb (29 mt) of scup.

The National Fisheries Institute (NFI) and Rutgers University submitted a proposal to conduct a third year of work on a commercial vessel-based trawl survey program in the Mid-Atlantic region that would track the migratory behavior of selected recreationally and commercially important species. Information gathered during this project would supplement the NMFS finfish survey databases and improve methods to evaluate how seasonal migration of fish in the Mid-Atlantic influences stock abundance estimates. One vessel would conduct survey work in the Mid-Atlantic along six offshore transects near Alvin, Hudson, Wilmington, Baltimore, and Washington Canyons. Up to 15, 1–nautical mile tows would be conducted along each transect at depths from 40 to 250 fathoms (73 to 457 m). Four transects would be sampled in both January and March, and two transects would be sampled in both May and November. Two additional transects may be conducted pending vessel availability, weather, and funding. Up to 25 vessels would participate in harvesting the RSA during the period January 1 through December 31, 2005. The RSA allocated for the project is 192,177 lb (87 mt) of summer flounder; 120,000 lb (54 mt) of scup; 281,350 lb (128 mt) of Loligo squid; 61,500 lb (28 mt) of black sea bass; and 279,750 lb (127 mt) of bluefish.

NFI and Rutgers University also submitted a proposal to conduct a second year of work to study finfish discarded in *Loligo* squid-targeted tows. The project would test different mesh sizes, including the legal-sized mesh size of 1.875 inches (4.8 cm) and larger mesh sizes up to 3.0 inches (7.6 cm). The project is designed to give insights to bycatch of finfish species when different mesh sizes are used in the *Loligo* squid fishery. Up to two vessels would conduct the project in February or March near Hudson Canyon. A total of 80 to 100 tows would be performed with vessels fishing in parallel, where possible. The RSA allocated for the project is 30,000 lb (14 mt) of black sea bass; 120,000 lb (54 mt) of scup; 281,000 lb (127 mt) of *Loligo* squid; and 161,740 lb (73 mt) of summer flounder.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Explanation of Quota Adjustments Due to Quota Overages

This rule proposes commercial quotas based on the proposed TALs and Total Allowable Catches (TACs) and the formulas for allocation contained in the FMP. In 2002, NMFS published final regulations to implement a regulatory amendment (67 FR 6877, February 14, 2002) that revised the way in which the commercial quotas for summer flounder, scup, and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). If NMFS approves a different TAL or TAC at the final rule stage, the commercial quotas will be recalculated based on the formulas in the FMP. Likewise, if new information indicates that overages have occurred and deductions are necessary, NMFS will publish notice of the adjusted quotas in the **Federal Register**. NMFS anticipates that the information necessary to determine whether overage deductions are necessary will be available by the time the final rule to implement these specifications is published. The commercial quotas contained in this proposed rule for summer flounder, scup, and black sea bass do not reflect any deductions for overages. The final rule, however, will contain quotas that have been adjusted consistent with the procedures described above and contained in the regulatory amendment.

Summer Flounder

The FMP specifies a target F of F_{max}, that is, the level of fishing that produces maximum yield per recruit. The best available scientific information indicates that, for 2005 and 2006, F_{max} for summer flounder is 0.26 (equal to an exploitation rate of about 22 percent from fishing).

The most recent stock assessment, updated by the Northeast Fisheries Science Center (NEFSC) Southern Demersal Working Group in June 2004, indicated that the summer flounder stock is not overfished but that overfishing is occurring, according to the definitions in the FMP. These conclusions were derived from the fact that, for 2003, the estimated total stock biomass of 149 million lb (67,585 mt) is 27 percent above the minimum biomass threshold of 117 million lb (53,070 mt) below which the stock is considered overfished (1/2 B_{msy}), and the estimated F of 0.29 was slightly above the FMP overfishing definition of $F=F_{max}=0.26$. In addition, spawning stock biomass (SSB) has increased steadily from 20.5 million lb (9,303 mt) in 1993 to 109 million lb (49,442 mt) in 2003, the highest value in the time series.

Although the summer flounder stock is no longer considered overfished, additional rebuilding is necessary because the Magnuson-Stevens Act requires that stocks be rebuilt to the level that produces maximum sustainable yield on a continuing basis, i.e., 234.6 million lb (106,400 mt) for summer flounder. Long-term projections indicate that the stock can reach this biomass target by 2010 through the implementation of TALs associated with a 75–percent probability of reaching the target F in 2005 through 2009. Based on the latest stock assessment update, a TAL of 30.3 million lb (13,744 mt) has a 75–percent probability of achieving an F of 0.26 if the TAL and assumed

discard level in 2004 are not exceeded. The TAL associated with a 75–percent probability level in 2006 is 33.0 million lb (14,969 mt).

The Council and the Board adopted the Summer Flounder Monitoring Committee's recommendation of a summer flounder TAL of 30.3 million lb (13,744 mt) for 2005 and 33.0 million lb (14,969 mt) for 2006. These TALs would represent a 7–percent increase and a 17–percent increase for 2005 and 2006, respectively, from the 2004 TAL of 28.2 million lb (12,791 mt). The initial TALs would be allocated 60 percent to the commercial sector and 40 percent to the recreational sector, i.e., the initial TAL for 2005 would be allocated 18.18 million lb (8,246 mt) to the commercial sector and 12.12 million lb (5,498 mt) to the recreational sector, and the initial TAL for 2006 would be allocated 19.8 million lb (8,981 mt) to the commercial sector and 13.2 million lb (5,987 mt) to the recreational sector. The commercial quota for each year then would be allocated to the coastal states based upon percentage shares specified in the FMP.

For 2005, the Council and Board also agreed to set aside 353,917 lb (160.5 mt) of the summer flounder TAL for research activities. For 2006, because information pertaining to the potential amount of RSA is unknown, RSA is conservatively estimated as 3 percent of the TAL, i.e., 990,000 lb (449 mt). After deducting the RSA, the TAL for 2005 would be divided into a commercial quota of 17.97 million lb (8,151 mt) and a recreational harvest limit of 11.98 million lb (5,434 mt), and the TAL for 2006 would be divided into a commercial quota of 19.21 million lb (8,714 mt) and a recreational harvest limit of 12.80 million lb (5,806 mt).

In addition, the Commission is expected to maintain the voluntary measures currently in place to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while also ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in any tables in this document because NMFS does not have authority to establish such subcategories.

NMFS proposes to implement the 30.3–million lb (13,744–mt) TAL with a 353,917–lb (160.5–mt) RSA for 2005, and the 33.0–million lb (14,969–mt) TAL with an estimated 990,000–lb (449–mt) RSA for 2006, as recommended by the Council and Board. The 11.98–million lb (5,434–mt) and 12.80–million lb (5,806–mt) recreational harvest limits for 2005 and 2006, respectively, would be allocated on a coastwide basis. The commercial quotas for 2005 and 2006 would be allocated to the states as shown in Tables 1 and 2, respectively, which present the allocations by state, with and without the commercial portion of the RSA deduction. These state quota allocations are preliminary and are subject to a reduction if there are overages of a state's quota for the previous fishing year (using the landings information and procedures described earlier). Any commercial quota adjustments to account for overages will be published in the **Federal Register** in the final rule implementing these specifications.

BILLING CODE 3510–22–S

Table 1. 2005 Proposed Initial Summer Flounder State Commercial Quotas

State	Percent Share	Commercial Quota lb	Commercial Quota kg[1]	Commercial Quota less RSA lb	Commercial Quota less RSA kg[1]
ME	0.04756	8,646	3,922	8,547	3,877
NH	0.00046	84	38	83	37
MA	6.82046	1,239,960	562,442	1,225,637	555,945
RI	15.68298	2,851,166	1,293,280	2,818,232	1,278,341
CT	2.25708	410,337	186,128	405,597	183,978
NY	7.64699	1,390,223	630,601	1,374,164	623,317
NJ	16.72499	3,040,603	1,379,209	3,005,481	1,363,277
DE	0.01779	3,234	1,467	3,197	1,450
MD	2.03910	370,708	168,152	366,426	166,210
VA	21.31676	3,875,387	1,757,864	3,830,622	1,737,559
NC	27.44584	4,989,654	2,263,292	4,932,017	2,237,148
TOTAL	100.00001	18,180,002	8,246,395	17,970,002	8,151,139

[1]Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Table 2. 2006 Proposed Initial Summer Flounder State Commercial Quotas

State	Percent Share	Commercial Quota lb	Commercial Quota kg[1]	Commercial Quota less RSA lb	Commercial Quota less RSA kg[1]
ME	0.04756	9,417	4,271	9,136	4,144
NH	0.00046	91	41	88	40
MA	6.82046	1,350,451	612,561	1,310,210	594,308
RI	15.68298	3,105,230	1,408,523	3,012,700	1,366,552
CT	2.25708	446,902	202,713	433,585	196,673
NY	7.64699	1,514,104	686,793	1,468,987	666,328
NJ	16.72499	3,311,548	1,502,108	3,212,871	1,457,349
DE	0.01779	3,522	1,598	3,417	1,550
MD	2.03910	403,742	183,136	391,711	177,679
VA	21.31676	4,220,718	1,914,505	4,094,950	1,857,457
NC	27.44584	5,434,276	2,464,972	5,272,346	2,391,520
TOTAL	100.00001	19,800,002	8,981,222	19,210,002	8,713,600

[1]Kilograms are as converted from pounds and do not add to the converted total due to rounding.

BILLING CODE 3510–22–C

Scup

Scup was last assessed in June 2002 at the 35th Northeast Regional Stock Assessment Workshop (SAW). The Stock Assessment Review Committee (SARC 35) indicated that the species is no longer overfished, but that stock status with respect to overfishing cannot currently be evaluated. The NEFSC spring survey 3–year average (2002 through 2004) for scup SSB was 3.74 kg/tow, which is about 35 percent higher than the threshold that defines the stock as overfished (2.77 kg/tow).

SARC 35 indicated that relative exploitation rates on scup have declined in recent years, although the absolute value of F cannot be determined. Overall, most recent scup survey observations indicate strong recruitment and some rebuilding of age structure. SARC 35 noted that the stock can likely sustain modest increases in catch, but that such increases should be taken with due consideration of the uncertainties associated with the stock status determination.

The target exploitation rate for scup for 2005 is 21 percent. The FMP specifies that the TAC associated with a given exploitation rate be allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector (TAC less discards = TAL). The commercial TAL is then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January-April)—45.11 percent; Summer (May-October)—38.95 percent; and Winter II (November-December)—15.94 percent.

The proposed scup specifications for 2005 are based on an exploitation rate in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Act, the Council prepared Amendment 12 to the FMP, which proposed to maintain the existing rebuilding schedule for scup established by Amendment 8 to the FMP. On April 28, 1999, NMFS disapproved the proposed rebuilding plan for scup because the rebuilding schedule did not appear to be sufficiently risk-averse. Later, however, NMFS advised the Council that use of the exploitation rate as a proxy for F would be acceptable and risk-averse. Therefore, the proposed scup specifications for 2005 are based on an exploitation rate of 21 percent. NMFS believes that the risks associated with the disapproved rebuilding plan are not applicable to the proposed specifications since they apply only for one fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. The scup stock has shown signs of significant rebuilding and is no longer overfished. It is, therefore, not necessary to deviate from the specified exploitation rate in 2005. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a more risk-averse approach to managing the resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that complies with all Magnuson-Stevens Act requirements.

Because of uncertainty associated with the spring survey and the pending stock assessment that will be presented to the SARC this December, the Monitoring Committee recommended, and the Council and Board adopted the recommendation to set specifications for 2005 only, and to maintain the current TAC/TAL. Based on the increase in the spring survey index in 2004, maintaining the 16.5–million lb (7,484–mt) TAL is likely to achieve the target exploitation rate for 2005. The level of discards used in 2004 (2.15 million lb (975 mt) continues to be used for 2005, so the TAC would be 18.65 million lb (8,460 mt). NMFS is proposing to implement the Council's and Board's TAC/TAL recommendation because it is considered likely to achieve the 21–percent exploitation rate required by the FMP.

Using the sector allocation specified in the FMP (commercial 78 percent; recreational--22 percent), the Council's recommendation would result in a commercial TAC of 14.55 million lb (6,600 mt) and a recreational TAC of 4.10 million lb (1,860 mt). Using the same commercial and recreational discard estimates used for the 2004 specifications (i.e., 2.08 million lb (943 mt) for the commercial sector, and 70,000 lb (32 mt) for the recreational sector), the Scup Monitoring Committee recommendation would result in an initial commercial TAL of 12.47 million lb (5,656 mt) and recreational harvest limit of 4.03 million lb (1,828 mt). The Council and Board also agreed to set aside 303,675 lb (138 mt) of the scup TAL for research activities. Deducting this RSA from the TAL would result in a commercial quota of 12.23 million lb (5,547 mt) and a recreational harvest limit of 3.96 million lb (1,796 mt).

Pursuant to an industry request, and to reduce scup discards, the Council and Board recommended an increase in the commercial scup Winter I Federal possession limit to 30,000 lb (13.6 mt) per trip for 2005. Because scup are a schooling species, otter trawl vessels operating where scup occur occasionally make very large hauls that consist almost entirely of scup. Under the current system, when one of these hauls is brought up, the possession limit may be kept by the hauling vessel while the remaining catch must be discarded or transferred to another vessel. Increasing the Winter I possession limit would convert potential regulatory discards of scup into landings, thus reducing bycatch and improving the efficiency of the commercial scup fishery. Allowing the commercial sector to fulfil the Winter I quota should also reduce the incentive for vessels to catch scup at the end of the Winter I period. States have indicated to the Commission and NMFS that they would implement a 30,000–lb (13.6–mt) landing limit per 2–week period (Sunday through Saturday). Because the current possession limit is 15,000 lb (6.8 mt), this measure would allow the same amount of scup to be landed in a 2–week period in 2005 as in 2004. In cases where state regulations regarding trip limits are more restrictive than the proposed 30,000–lb (13.6–mt) trip limit, the state regulations would apply. That is, vessels landing scup in states with more restrictive possession limits may need to make more than one trip to reach the 2–week limit, if that state is enforcing a 30,000–lb (13.6–mt) 2–week landing limit. The Winter I possession limit would be reduced to 1,000 lb (454 kg) when 80 percent of the quota is projected to be reached. NMFS is proposing to implement the Council's and Board's scup Winter I Federal possession limit recommendation because it would allow for the achievement of the Scup Winter I quota while reducing scup discards. NMFS is proposing to retain the current initial possession limit of 1,500 lb (680 kg) for Winter II (November-December).

Table 3 presents the 2005 commercial allocation recommended by the Council, with and without the 303,675–lb (138–mt) RSA deduction. These 2005 allocations are preliminary and may be subject to downward adjustment in the final rule implementing these specifications due to 2004 overages, based on the procedures for calculating overages described earlier.

TABLE 3. 2005 PROPOSED INITIAL TAC, COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS, IN LB (KG)

Period	Percent	TAC	Discards	Commercial Quota	Commercial Quota less RSA	Possession Limits
Winter I	45.11	6,563,505 (2,977,186)	938,288 (425,605)	5,625,217 (2,551,582)	5,518,367 (2,503,089)	30,000[1] (13,607)
Summer	38.95	5,667,225 (2,570,636)	810,160 (367,486)	4,857,065 (2,203,150)	4,764,806 (2,161,280)	n/a*
Winter II	15.94	2,319,270 (1,052,014)	331,522 (150,391)	1,987,718 (901,623)	1,949,962 (884,487)	1,500 (680)
Total[2]	100.00	14,550,000 (6,599,837)	2,080,000 (943,482)	12,470,000 (5,656,355)	12,233,134 (5,548,856)	

[1]The Winter I landing limit would drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.
[2]Totals subject to rounding error.
*n/a-Not applicable

The final rule to implement Framework 3 to the FMP (68 FR 62250, November 3, 2003) implemented a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period to be rolled over to the quota for the Winter II period. In any year that NMFS determines that the landings of scup during Winter I are less than the Winter I quota for that year, NMFS will, through notification in the **Federal Register**, increase the Winter II quota for that year by the amount of the Winter I underharvest, and adjust the Winter II possession limits consistent with the amount of the quota increase. The Council recommended no change in the Winter II possession limits that result from potential rollover of quota from the Winter I period for the 2005 fishing year . Therefore, NMFS proposes to maintain the Winter II possession limit-to-rollover amount ratios specified for 2004, as presented in Table 4.

TABLE 4. POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
1,500	680	0–499,999	0–227	0	0	1,500	680
1,500	680	500,000–999,999	227–454	500	227	2,000	907
1,500	680	1,000,000–1,499,999	454–680	1,000	454	2,500	1,134
1,500	680	1,500,000–1,999,999	680–907	1,500	680	3,000	1,361
1,500	680	2,000,000–2,500,000	907–1,134	2,000	907	3,500	1,587

Other Scup Management Measures

Under the current regulations for the directed trawl fishery at § 648.123(a)(1), no owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (227 kg) or more of scup from November 1 through April 30, or 100 lb (45 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 4.5–inch (11.4–cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0–inch (12.7–cm) mesh forward of the 4.5–inch (11.4–cm) mesh, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) of less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.4 cm) throughout the net. These requirements have been in effect since February 2002 (66 FR 58097, November 20, 2001). In consideration of the increasing abundance of scup and of recent studies that indicate that discards may have increased in 2004, the Council and Board have recommended an increase in the minimum mesh size from 4.5 inches (11.4 cm) to 5 inches (12.7 cm), and an increase in the threshold level to trigger the mesh requirement from 100 lb (45 kg) to 200 lb (90 kg) for the Scup Summer period (May 1 through October 31). The recommendation was to increase the minimum mesh size to 5 inches (12.7 cm) for the 75 meshes from the terminus of the net; and for codends constructed with fewer than 75 meshes, a minimum mesh size of 5 inches (12.7 cm) throughout the net. Through this proposed rule, NMFS seeks comments on the likely effectiveness of and/or costs associated with the proposed change in minimum mesh size for scup. The change to the minimum mesh size regulations also would apply in the Scup Gear Restricted Areas (GRAs).

Scup GRAs

In 2000, the 31st Stock Assessment Review Committee (SARC 31) emphasized the need to reduce scup mortality resulting from discards in the scup fishery and in other fisheries. In response to that recommendation, GRAs were established during the 2000 fishing year (65 FR 33486, May 24, 2000, and 65 FR 81761, Dec. 27, 2000) and modified for the 2001 fishing year (66 FR 12902, March 1, 2001). The GRAs prohibit trawl vessels from fishing for, or possessing, certain non-exempt species (*Loligo* squid, black sea bass, and silver hake (whiting)) when fishing with mesh smaller than that required to

fish for scup during the effective periods (January 1 through March 15 for the Southern GRA, and November 1 through December 31 for the Northern GRA).

For 2003, the Council recommended allowing vessels to fish for non-exempt species with small mesh in the GRAs, provided they use specially modified trawl nets and carry observers, consistent with Atlantic Coastal Cooperative Statistics Program observer standards. Instead, NMFS implemented an alternative program (the GRA Exemption Program) requiring 100–percent observer coverage for all vessels fishing with small mesh for non-exempt species in the GRAs using the modified gear. This alternative imposed significantly fewer administrative and enforcement complexities and was intended to provide more data to evaluate the effectiveness of the gear modifications (68 FR 60, January 2, 2003). NMFS maintained the GRA Exemption Program for 2004 (69 FR 2074, January 14,2004). To date, no vessels have participated in the GRA Exemption Program.

For 2005, the Scup Monitoring Committee recommended the continuation of the GRAs with a shift of the entire Southern GRA by 3 longitudinal minutes to the west. The recommendation to move the Southern GRA follows an industry request and subsequent analysis by the NEFSC, which indicates that the shift would expose an additional 3 percent of the scup stock to small-mesh gear during the effective period, while allowing access to an additional 8 percent of the Loligo squid stock. Termination of the existing GRA Exemption Program also was recommended. The Council and Board adopted the Scup Monitoring Committee's recommendations. NMFS proposes to implement the Council and Board recommendations in order to allow for greater opportunity for trawl vessels to harvest Loligo squid while maintaining the protective aspects of the Southern GRA for scup.

Black Sea Bass

Black sea bass was last assessed in June 2004 at the 39th Northeast Regional SAW. The Stock Assessment Review Committee (SARC 39) indicated that black sea bass are no longer overfished and overfishing is not occurring. The biomass threshold is defined as the maximum value of a 3–year moving average of the NEFSC spring survey catch-per-tow (1977–1979 average of 0.9 kg/tow). The 2003 biomass index (the 3–year average for 2002–2004) is 1.4 kg/tow, about 55 percent above the threshold. Based on this value, the stock is no longer overfished.

The target exploitation rate for 2005 is 25 percent, which is based on the current estimate of F_{max} or 0.32. Given the uncertainty in the spring survey estimates for the 2002–2004 period, and the potential underestimation of the 2003 exploitation rate, the Black Sea Bass Monitoring Committee recommended maintaining the current TAL of 8 million lb (3,629 mt) for both 2005 and 2006. The Council and Board rejected the Monitoring Committee recommendation, and instead recommended an 8.2 million-lb (3,719–mt) TAL (based on information that the stock size has increased in recent years), but for 2005 only. This TAL would be a 2.5–percent increase from 2004. NMFS is proposing to implement the Council's and Board's TAL recommendation because it is considered likely to achieve the 25–percent exploitation rate that is required by the FMP.

The FMP specifies that the TAL associated with a given exploitation rate be allocated 49 percent to the commercial sector and 51 percent to the recreational sector; therefore, the initial TAL would be allocated 4.02 million lb (1,823 mt) to the commercial sector and 4.18 million lb (1,896 mt) to the recreational sector. The Council and Board also agreed to set aside 109,500 lb (50 mt) of the black sea bass TAL for research activities. After deducting the RSA, the TAL would be divided into a commercial quota commercial quota of 3.96 million lb (1,796 mt) and a recreational harvest limit of 4.13 million lb (1,873 mt).

In addition to the changes recommended by the Council and the Board, this proposed rule also would remove reference to a specific date by which the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees shall meet for the purposes of recommending annual or multi-year TALs. These actions are intended to provide flexibility for the Council in scheduling Monitoring Committee meetings and to remove an unnecessary restriction. NMFS previously modified the text regarding Monitoring Committee meetings in §§ 648.100, 648.120, and 648.140 to reflect that annual review of updated information on the fisheries by the Monitoring Committees would not be required during the period of multi-year specifications. These regulatory changes will be effective November 29, 2004 (69 FR 62818, October 28, 2004).

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA can be obtained from the Council (see **ADDRESSES**). A summary of the economic analysis follows.

The economic analysis assessed the impacts of the various management alternatives. The no action alternative is defined as follows: (1) No proposed specifications for the 2005 and 2006 summer flounder fisheries and the 2005 scup and black sea bass fisheries would be published; (2) the indefinite management measures (minimum mesh sizes, minimum sizes, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2005; (4) the existing GRA regulations would remain in place for 2005; and (5) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quotas). Implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act. In addition, the no action alternative would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources. Therefore, the no action alternative is not considered to be a reasonable alternative to the preferred action.

Alternative 1 consists of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass. Alternative 2 consists of the most restrictive quotas (i.e., lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the least restrictive quotas (i.e., highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2004, it would also likely exceed the biological targets specified in the FMP.

Table 5 presents the 2005 initial TALs, RSA, commercial quotas adjusted for RSA, and preliminary recreational

harvests for the fisheries under these three quota alternatives.

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Table 5. Comparison, in lb (mt) of the alternatives of quota combinations reviewed.

	Initial TAL	RSA	Preliminary Adjusted Commercial Quota*	Preliminary Recreational Harvest Limit
Quota Alternative 1 (Preferred)				
Summer Flounder Preferred Alternative - 2005	30.3 million (13,744)	353,917 (161)	17.97 million (8,151)	11.98 million (5,434)
Summer Flounder Preferred Alternative - 2006	33.0 million (14,969)	990,000 (449)	19.21 million (8,714)	12.80 million (5,806)
Scup Preferred Alternative (Status quo)	16.5 million (7,484)	303,675 (138)	12.23 million (5,547)	3.96 million (1,796)
Black Sea Bass Preferred Alternative	8.2 million (3,719)	109,500 (50)	3.96 million (1,796)	4.13 million (1,873)
Quota Alternative 2 (Most Restrictive)				
Summer Flounder Alternative 2 (Status Quo) - 2005	28.2 million (12,791)	353,917 (161)	16.71 million (7,580)	11.14 million (5,053)
Summer Flounder Alternative 2 (Status Quo) - 2006	28.2 million (12,791)	846,000 (384)	16.41 million (7,443)	10.94 million (4,962)
Scup Alternative 2	11.0 million (4,990)	303,675 (138)	7.95 million (3,606)	2.74 million (1,242)
Black Sea Bass Alternative 2 (Status Quo)	8.0 million (3,629)	109,500 (50)	3.87 million (1,755)	4.02 million (1,823)
Quota Alternative 3 (Least Restrictive)				
Summer Flounder Alternative 3 - 2005	32.6 million (14,787)	353,917 (161)	19.35 million (8,777)	12.90 million (5,851)
Summer Flounder Alternative 3 - 2006	35.5 million (16,103)	1.07 million (485)	20.66 million (9,371)	13.77 million (6,246)
Scup Alternative 3	22.0 million (9,979)	303,675 (138)	16.53 million (7,498)	5.17 million (2,345)
Black Sea Bass Alternative 3	8.7 million (3,946)	109,500 (50)	4.21 million (1,910)	4.38 million (1,987)

* Note that preliminary quotas are provisional and may change to account for overages of the 2004 quotas.

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Table 6 presents the percent change associated with each of these commercial quota alternatives (adjusted for RSA) compared to the final adjusted quotas for 2004.

TABLE 6. PERCENT CHANGE ASSOCIATED WITH 2005 ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2004 ADJUSTED QUOTA.

	Total Changes Including Overages and RSA		
	Quota Alternative 1 (Preferred)	Quota Alternative 2 (Most Restrictive)	Quota Alternative 3 (Least Restrictive)
Summer Flounder			
Aggregate Change (2005)	+7.20%	-0.31%	+15.44%
Aggregate Change 2006)	+14.59%	-2.08%	+23.27%
Scup			

TABLE 6. PERCENT CHANGE ASSOCIATED WITH 2005 ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2004 ADJUSTED QUOTA.—Continued

	Total Changes Including Overages and RSA		
	Quota Alternative 1 (Preferred)	Quota Alternative 2 (Most Restrictive)	Quota Alternative 3 (Least Restrictive)
Aggregate Change	-0.85%*	-35.60%	+33.90%
Black Sea Bass			
Aggregate Change	+5.32%	+2.93*	+11.97%

*Denotes status quo management measures.

All vessels that would be impacted by this proposed rulemaking are considered to be small entities; therefore, there would be no disproportionate impacts between large and small entities. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the proposed 2005 quotas (and 2006 summer flounder quota) could affect 2,114 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2003. However, the more immediate impact of this rule will likely be felt by the 1,040 vessels that actively participated (i.e., landed these species) in these fisheries in 2003.

The Council estimated the total revenues derived from all species landed by each vessel during calendar year 2003 to determine a vessel's dependence and revenue derived from a particular species. This estimate provided the base from which to compare the effects of the proposed quota changes from 2004 to 2005 (and 2006 for the summer flounder fishery).

The Council's analysis of the harvest limits in Alternative 1 (Preferred Alternative) indicated that these harvest levels would produce a revenue increase for 1,000 commercial vessels that are expected to be impacted by this rule. Up to 40 vessels that derive a large proportion of their revenues from scup were projected to incur small revenue losses (i.e., less than 5 percent) due to the decrease in the adjusted scup quota that results from the increase in scup GRA proposed for 2005. No vessels were expected to have revenue losses of greater than 5 percent.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Assuming 2003 ex-vessel prices (summer flounder—$1.61/lb; scup—$0.60/lb; and black sea bass—$2.02/lb), the 2005 quotas in Preferred Alternative 1 would increase total summer flounder and black sea bass revenues by approximately $1.9 million and $165,000, respectively, and decrease scup revenues by approximately $60,000, relative to expected 2004 revenues.

Assuming that the total ex-vessel gross revenue associated with the Preferred Alternative for each fishery is distributed equally among the vessels that landed those species in 2003, the average change in gross revenue per vessel associated with the preferred quota would be a $2,322 increase for summer flounder, a $106 decrease for scup, and a $546 increase for black sea bass. The number of vessels landing summer flounder, scup, and black sea bass in 2003 was 839, 566, and 702, respectively.

The overall increase in gross revenue associated with the three species combined in 2005 compared to 2004 is approximately $2.3 million (assuming 2003 ex-vessel prices) under the Preferred Alternative. If this amount is distributed equally among the 1,040 vessels that landed summer flounder, scup, and/or black sea bass in 2003, the average increase in revenue would be approximately $2,184 per vessel.

Complete revenue analysis for 2006 cannot be completed at this time because the Council is recommending the 2006 TAL for summer flounder only. Based on the proposed 2006 TAL for summer flounder, and assuming 2003 ex-vessel price ($1.61 per lb), ex-vessel revenue would increase by approximately $3.9 million relative to 2004. Assuming the increase in summer flounder total ex-vessel gross revenue associated with the preferred alternative is distributed equally among the 839 vessels that landed summer flounder in 2003, the average increase in revenue associated with the increase in summer flounder TAL is $4,701 per vessel. The change in gross revenues associated with the potential changes in landings in 2006 versus 2004 assume static prices for summer flounder. However, if ex-vessel prices for this species change as a consequence of changes in landings, then the associated revenue changes could be different than those estimated above. Complete revenue analysis for the 2006 fishing year will be conducted as part of the proposed rule for the 2006 summer flounder, scup, and black sea bass specifications, once the Council recommends TAL's for scup and black sea bass.

The Council's analysis of the harvest limits of Alternative 2 (i.e., the most restrictive harvest limits) indicated that these harvest limits would produce a revenue increase for 191 commercial vessels, primarily because a large proportion of their revenues were derived from black sea bass, and a revenue loss for the other 935 commercial vessels expected to be impacted by this proposed rule. Assuming 2003 ex-vessel prices as described above, the 2005 quotas in Alternative 2 would increase total black sea bass revenues by approximately $202,000, and decrease total summer flounder and scup revenues by approximately $81,000 and $2.6 million, respectively, relative to expected 2004 revenues.

Assuming that the total ex-vessel gross revenue associated with Alternative 2 is distributed equally among the vessels that landed those species in 2003, the average change in gross revenue per vessel associated with Alternative 2 would be a $95 decrease for summer flounder, a $4,654 decrease for scup, and a $288 increase for black sea bass.

The overall reduction in gross revenue associated with the three species combined in 2005 compared to 2004 is approximately $2.5 million (assuming 2003 ex-vessel prices) under Alternative 2. If this amount is distributed equally among the 1,040 vessels that landed summer flounder, scup, and/or black sea bass in 2003, the average decrease in revenue would be approximately $2,416 per vessel.

The Council's analysis of the harvest limits of Alternative 3 (i.e., the least

restrictive harvest limits) indicated that these harvest limits would produce a revenue increase for all 1,040 commercial vessels. Assuming 2003 ex-vessel prices as described above, the 2005 quotas in Alternative 3 would increase total summer flounder, scup, and black sea bass revenues by approximately $4.2 million, $2.5 million, and $889,000, respectively, relative to expected 2004 revenues.

Assuming that the total ex-vessel gross revenue associated with Alternative 3 is distributed equally among the vessels that landed those species in 2003, the average increase in gross revenue per vessel associated with Alternative 3 would be $4,790 for summer flounder, $4,442 for scup, and $1,266 for black sea bass.

The overall increase in gross revenue associated with the three species combined in 2005 compared to 2004 is approximately $7.6 million (assuming 2003 ex-vessel prices) under Alternative 3. If this amount is distributed equally among the 1,040 vessels that landed summer flounder, scup, and/or black sea bass in 2003, the average increase in revenue would be approximately $7,281 per vessel.

The Council also prepared an analysis of the alternative recreational harvest limits. The 2005 recreational harvest limits were compared with previous years through 2003, the most recent year with complete recreational data.

Landing statistics from the last several years show that recreational summer flounder landings have generally exceeded the recreational harvest limits, ranging from a 5–percent overage in 1993 to a 122–percent overage in 2000. In 2001, summer flounder recreational landings were 11.64 million lb (5,280 mt), exceeding the harvest limit of 7.16 million lb (3,248 mt) by 63 percent. In 2002, recreational landings were 8.01 million lb (3,633 mt), 18 percent below the recreational harvest limit of 9.72 million lb (4,409 mt). In 2003, recreational landings were 11.61 million lb (5,266 mt), 4 percent above the recreational harvest limit of 9.32 million lb (4,228 mt).

The Alternative 1 summer flounder 2005 and 2006 preferred recreational harvest limits (adjusted for RSA) of 11.98 million lb (5,434 mt) and 12.80 million lb (5,806 mt), respectively, would be a 6–percent and 14–percent increase, respectively, from the 2004 recreational harvest limit of 11.21 million lb (5,085 mt), and would represent a 3–percent and 10–percent increase, respectively, from 2003 landings. The 2005 and 2006 summer flounder Alternative 2 (status quo alternative) recreational harvest limits of 11.14 million lb (5,053 mt) and 10.94 million lb (4,962 mt), respectively, would be less than 1 percent and 3 percent lower, respectively, than the 2004 recreational harvest limit, and would represent a 4–percent decrease and a 6–percent decrease, respectively, from 2003 recreational landings. The 2005 and 2006 summer flounder Alternative 3 recreational harvest limits of 12.90 million lb (5,851 mt) and 13.77 million lb (6,246 mt), respectively, would be a 15–percent and 23–percent increase, respectively, from the 2004 recreational harvest limit and would represent an 11–percent increase and a 19–percent increase, respectively, from 2003 recreational landings. If Alternative 1, 2, or 3 is chosen, it is possible that more restrictive management measures may be required to prevent anglers from exceeding the 2005 and 2006 recreational harvest limits, depending upon the effectiveness of the 2004 recreational management measures. More restrictive regulations could affect demand for party/charter boat trips. However, the market demand for this sector currently is stable, so the effects may be minimal. Currently, neither behavioral or demand data are available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. Overall, it is expected that positive social and economic impacts would occur as a result of the proposed 6–percent (for 2005) and 14–percent (for 2006) increase in the recreational harvest limit, relative to 2004 because of the increase in fishing opportunities. The Council intends to recommend specific measures to attain the 2005 summer flounder recreational harvest limit in December 2004, and will provide additional analysis of the measures upon submission of its recommendations in early 2005. Similarly, the Council will recommend 2006 recreational management measures in December 2005.

Scup recreational landings declined over 89 percent for the period 1991 to 1998, then increased by 517 percent from 1998 to 2000. In 2002, recreational landings were 3.62 million lb (1,642 mt), or 33 percent above the recreational harvest limit of 2.71 million lb (1,229 mt). In 2003, recreational landings were 9.33 million lb (4,232 mt), or 132 percent above the recreational harvest limit of 4.01 million lb (1,819 mt). Under the Preferred Alternative, the adjusted scup recreational harvest limit for 2005 would be 3.96 million lb (1,796 mt), 1 percent lower than the 2004 recreational harvest limit, and would represent a 57–percent decrease from 2003 recreational landings. The Alternative 2 scup recreational harvest limit of 2.74 million lb (1,242 mt) for 2005 would be 32 percent less than the 2004 recreational harvest limit, and 71 percent less than 2003 recreational landings. The Alternative 3 scup recreational harvest limit of 5.17 million lb (2,345 mt) for 2005 would be an increase of 30 percent from the 2004 recreational harvest limit and would represent a 45–percent decrease from 2003 recreational landings. With Alternative 2, and possibly Alternative 1, more restrictive management measures might be required to prevent anglers from exceeding the 2004 recreational harvest limit, depending largely upon the effectiveness of the 2004 recreational management measures. As described above for the summer flounder fishery, the effect of greater restrictions on scup party/charter boats is unknown at this time. Although the proposed recreational harvest limit is approximately 30,000 lb (13.6 mt) less than the adjusted limit for 2004, because it is only a marginal difference from the current harvesting limit, it is not likely that more effort controls (e.g., bag limits) will be required to constrain 2005 recreational landings. Overall, positive social and economic impacts are expected to occur as a result of the scup recreational harvest limit for 2005 because current opportunities for recreational fishing would be maintained. The Council intends to recommend specific measures to attain the 2005 scup recreational harvest limit in December 2004, and will provide additional analysis of the measures upon submission of its recommendations early in 2005.

Black sea bass recreational landings increased slightly from 1991 to 1995. Landings decreased considerably from 1996 to 1999, and then substantially increased in 2000. In 2001, 2002, and 2003, recreational landings were 3.42 million lb (1,551 mt), 4.46 million lb (2,023 mt), and 4.26 million lb (1,932 mt), respectively. For the recreational fishery, the adjusted 2005 harvest limit under Alternative 1 would be 4.13 million lb (1,873 mt), a 3–percent increase from the 2004 recreational harvest limit and a 3–percent decrease from 2003 recreational landings. Under Alternative 2, the 2005 recreational harvest limit would be 4.02 million lb (1,823 mt), a less than 1–percent increase from the 2004 recreational harvest limit and a 6–percent decrease from 2003 recreational landings. The 2005 recreational harvest limit under Alternative 3 would be 4.38 million lb

(1,986 mt), a 9–percent increase from the 2004 recreational harvest limit and a 3–percent increase from 2003 recreational landings. Each of the three alternatives would likely result in positive economic impacts on the recreational fishery because of an increase in fishing opportunities. The Council intends to recommend specific measures to attain the 2005 black sea bass recreational harvest limit in December 2004, and will provide additional analysis of the measures upon submission of its recommendations early in 2005. Overall, positive social and economic impacts are expected to occur as a result of the preferred black sea bass recreational harvest limit for 2004 because of the increase in fishing opportunities.

In summary, the 2005 commercial quotas and recreational harvest limits contained in the Preferred Alternative, after accounting for the proposed RSA amounts, would result in substantially higher summer flounder and black sea bass landings and a small decrease in scup landings, relative to 2004. The proposed specifications contained in the Preferred Alternative were chosen because they allow for the maximum level of landings, while still achieving the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP.

The proposed commercial scup possession limits for Winter I (30,000 lb (13.6 mt) per trip) and Winter II (1,500 lb (680 kg) per trip) were chosen as an appropriate balance between the economic concerns of the industry (i.e., landing enough scup to make the trip economically viable) and the need to ensure the equitable distribution of the quota over the period. The proposed Winter I possession limit was selected specifically to coordinate with the 30,000 lb (13.6 mt) landing limits per 2–week period recommended by the Commission to be implemented by most states while satisfying concerns about enforcement of possession limits. Changes in possession limits can impact profitability in various ways. These impacts would vary depending on fishing practices. These possession limits are expected to constrain commercial landings to the commercial TAL, and distribute landings equitably throughout the periods to avoid derby-style fishing effort and associated market gluts. According to anecdotal information, potential price fluctuations occur as result of irregular supply. The recommended possession limits for Winter I would allow fishermen to determine the best time for them to fish and further help to avoid market gluts and unsafe fishing practices. The recommended possession limit is the maximum possible possession limit that fits within the landing limit constraint being imposed by the states under the aegis of the Commission (a landing limit of 30,000 lb (13.6 mt) per 2–week period). Therefore, there would be no marginal benefit associated with any possession limit higher than 30,000 lb (13.6 mt) that the Council might have considered. And, because any possession limit that the Council might have considered less than 30,000 lb (13.6 mt) would have imposed a constraint on the industry, potentially preventing them from taking full advantage of the states' landing limit, the proposed Winter I possession limit is the alternative at would result in the most beneficial economic impacts to the industry.

Maintaining the current mesh size and the current threshold level to trigger the mesh requirement for the scup fishery would not be expected to change the economic or social impacts in 2005 compared to 2004. However, the proposed actions to increase the minimum scup mesh size from 4.5 in (11.4 cm) to 5.0 in (12.7 cm) and the related threshold trigger from 100 lb (45 kg) to 200 lb (90 kg) would have positive socioeconomic impacts as they would allow for a reduction in the discard of undersized fish, thus improving the efficiency of the commercial scup fishery compared to the status quo. The cost to the industry to implement the change in minimum mesh size is expected to be minimal due to the configuration of the nets subject to this change. The current regulations allow for 4.5–in (11.4–cm) mesh in the codend of a net for no more than 25 meshes from the terminus of the net. Forward of this codend, at least 100 meshes must be 5.0–in (12.7–cm) mesh. To implement the proposed change, all that would be required in these nets is the removal of the 4.5–in (11.4–cm) codend and closing off the remaining 5.0–in (12.7–cm) mesh. Increasing the minimum mesh size to something larger than 5.0 in (12.7 cm) would require much more significant changes in net configuration and would result in more significant costs to the industry. Maintaining the status quo mesh size, or decreasing the minimum mesh to something smaller than 4.5 in (11.4 cm), would eliminate any need for the industry to alter net configurations, but would also forgo the opportunity to increase the efficiency of the fishery by reducing discards of small scup and other species currently caught in the 4.5–in (11.4–cm) mesh nets. The Council therefore determined that the preferred scup mesh size and threshold level minimize negative economic impacts on the industry.

The costs and benefits of allowing vessels using small-mesh experimental nets to fish in the GRAs under the GRA Exemption Program were described in the proposed rule (67 FR 70904, November 27, 2002) and the final rule (68 FR 60, January 2, 2003) implementing the 2003 specifications. Those impacts are not repeated here. Given that no fishing vessels have participated in the GRA Exemption Program since its implementation, its elimination is not expected to result in changes to the economic and social aspects of the fishery compared to the status quo alternative.

Under the status quo alternative for the scup Southern GRA, socioeconomic impacts are expected to be similar to those in previous years. Moving the Southern GRA 3 minutes westward is expected to result in positive socioeconomic impacts, relative to the status quo, due to increased availability of Loligo to participants in the small-mesh trawl fishery. Trawl survey data indicate that the westward shift of the Southern GRA could result in a 3–percent increase in the capture of scup, a 5–percent increase in black sea bass capture, and an 8–percent increase in *Loligo* capture. The Council also considered an alternative to redefine the seaward boundary of the Southern GRA so that it would approximate the 50–fathom (91.4–m) bathymetric contour, thus making an additional 1,455–nm2 area available for the small-mesh trawl fishery. It is estimated that this change would result in a 31–percent increase in the capture of scup, a 40–percent increase in black sea bass capture, and an 21–percent increase in *Loligo* capture. This second alternative was not selected because, as indicated by the Council, losses in estimated protection under this alternative would likely have a diminishing effect on any positive impacts accumulated thus far, such that the Southern GRA would be less likely to function adequately as a protective mechanism for scup and black sea bass.

The commercial portion of the summer flounder RSA allocations in the Preferred Alternative, if made available to the commercial fishery, could be worth as much as $341,884 (for 2005) and $956,340 (for 2006) dockside, based on a 2003 ex-vessel price of $1.61/lb. Assuming an equal reduction in fishing

opportunity among all active vessels (i.e., the 839 vessels that landed summer flounder in 2003), this could result in a per-vessel potential revenue loss of approximately $407 (for 2005) and $1,140 (for 2006). Because information pertaining to RSA projects for 2006 is not yet known, the per-vessel revenue loss for 2006 is likely overestimated because the RSA allocation assumed for 2006 represents the maximum allowable allocation (3 percent of the TAL). The Council to date has never utilized the maximum allowable RSA allocation, so it is expected that at least some of the assumed RSA allocation would ultimately be added back into the commercial quota for 2006. Changes in the summer flounder recreational harvest limit as a result of the 353,917–lb (79–mt) RSA are not expected to be significant as the deduction of RSA from the TAL would result in a relatively marginal decrease in the recreational harvest limit from 12.1 million lb (5,489 mt) to 12 million lb (5,443 mt) for 2005 and from 13.2 million lb (5,987 mt) to 12.8 million lb (5,805 mt) for 2006. Because this is a marginal change, it is unlikely that the recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

The scup RSA allocation in the Preferred Alternative, if made available to the commercial fishery, could be worth as much as $142,119 dockside, based on a 2003 ex-vessel price of $0.60/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels (i.e., the 566 vessels that landed scup in 2003), this could result in a loss of potential revenue of approximately $251 per vessel. The deduction of RSA from the TAL results in a relatively marginal decrease in the recreational harvest limit from 4.03 million lb (1,828 mt) to 3.96 million lb (1,796 mt). It is unlikely that scup recreational possession, size, or seasonal limits would change as the result of the RSA allocation because the reduction in the harvest limit is so small.

The black sea bass RSA allocation in the Preferred Alternative, if made available to the commercial fishery, could be worth as much as $108,383 dockside, based on a 2003 ex-vessel price of $2.02/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels (i.e., the 702 vessels that caught black sea bass in 2003), this could result in a loss of approximately $154 per vessel. The deduction of RSA from the TAL would result in a relatively marginal decrease in recreational harvest from black sea bass recreational harvest limit from 4.18 million lb (1,896 mt) to 4.13 million lb (1,873 mt). It is unlikely that the black sea bass possession, size, or seasonal limits would change as the result of this RSA allocation because the reduction in the harvest limit is so small.

Overall, long-term benefits are expected as a result of the RSA program due to improved fisheries data and information. If the total amount of quota set-aside is not awarded for any of the three fisheries, the unused set-aside amount will be restored to the appropriate fishery's TAL. It should also be noted that fish harvested under the RSAs would be sold, and the profits would be used to offset the costs of research. As such, total gross revenue to the industry would not decrease if the RSAs are utilized.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 1, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (a)(127) is removed and reserved, and paragraph(a)(122) is revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(122) Fish for, catch, possess, retain or land Loligo squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in §§ 648.122 and 648.123(a), unless the nets or netting are stowed in accordance with § 648.123(b).

* * * * *

(127) [Reserved]

3. In § 648.100, paragraph (a) is revised to read as follows:

§ 648.100 Catch quotas and other restrictions.

(a) *Review.* The Summer Flounder Monitoring Committee shall review each year the following data, subject to availability, unless a TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the annual allowable levels of fishing and other restrictions necessary to achieve, with at least a 50–percent probability of success, a fishing mortality rate (F) that produces the maximum yield per recruit (F_{max}): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

* * * * *

4. In § 648.120, paragraph (a) is revised to read as follows:

§ 648.120 Catch quotas and other restrictions.

(a) *Review.* The Scup Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas: Commercial, recreational, and research data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; and any other relevant information. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve the F that produces the maximum yield per recruit (F_{max}).

* * * * *

5. In § 648.122, paragraph (d) is removed and reserved, and the section heading, paragraph (a)(1), and the first two sentences of paragraph (b)(1) are revised to read as follows:

§ 648.122 Season and area restrictions.

(a) * * *

(1) * * * From January 1 through March 15, all trawl vessels in the

Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0–inch (12.7–cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
SGA1	39° 20′	72° 53′
SGA2	39° 20′	72° 28′
SGA3	38° 00′	73° 58′
SGA4	37° 00′	74° 43′
SGA5	36° 30′	74° 43′
SGA6	36° 30′	75° 03′
SGA7	37° 00′	75° 03′
SGA8	38° 00′	74° 23′
SGA1	39° 20′	72° 50′

(b) * * *

(1) * * * From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, 5.0–inch (12.7 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. * * *

* * * * *

(d) [Reserved]

* * * * *

6. In § 648.123, paragraph (a)(1) is revised to read as follows:

§ 648.123 Gear restrictions.

(a) * * *

(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0–inch (12.7–cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. Scup on board these vessels must be stowed separately and kept readily available for inspection. Measurement of nets will be in conformity with § 648.80(f)(2)(ii).

* * * * *

7. In § 648.140, paragraph (a) is revised to read as follows:

§ 648.140 Catch quotas and other restrictions.

(a) *Review.* The Black Sea Bass Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 23 percent (based on F_{max}) in 2003 and subsequent years: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

* * * * *

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Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm and Ranch Lands Protection Program

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Notice of request for proposals.

SUMMARY: Section 2503 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the Food Security Act of 1985 to include the Farm and Ranch Lands Protection Program (FRPP), formerly known as the Farmland Protection Program (FPP). Congress delegated authority to administer FRPP to the Chief of the Natural Resources Conservation Service (NRCS). NRCS, on behalf of the Commodity Credit Corporation (CCC) and using its authorities, requests proposals from Federally recognized Indian tribes, States, units of local government, and nongovernmental organizations to cooperate in the acquisition of conservation easements on farms and ranches. Eligible land includes farm and ranch land that has prime, unique, or other productive soil, or that contains historical or archaeological resources. These lands must also be subject to a pending offer from eligible entities for the purpose of protecting topsoil by limiting conversion of that land to nonagricultural uses. Over $78 million in FRPP funds is available to purchase conservation easements in fiscal year 2005.

DATES: Proposals must be received in the NRCS State Office by April 5, 2005.

ADDRESSES: Written proposals must be sent to the appropriate NRCS State Conservationist, Natural Resources Conservation Service, USDA. The telephone numbers and addresses of the NRCS State Conservationists are in the appendix of this notice.

FOR FURTHER INFORMATION CONTACT: Denise Coleman, NRCS; phone: (202) 720–3527; fax: (202) 720–4265; or e-mail: *denise.coleman@usda.gov*; Subject: FRPP or consult the NRCS Web site at: *http://www.nrcs.usda.gov/programs/farmbill/2002/PubNotcChron.html*.

SUPPLEMENTARY INFORMATION:

Background

Urban sprawl continues to threaten the Nation's farm and ranch land, as social and economic changes over the past three decades have influenced the rate at which land is converted to non-agricultural uses. Population growth, demographic changes, preferences for larger lots, expansion of transportation systems, and economic prosperity have contributed to increases in agricultural land conversion rates. The amount of farm and ranch land lost to development and the quality of farmland being converted are significant concerns. In most States, prime farmland is being converted at two to four times the rate of other, less-productive agricultural land.

There continues to be an important national interest in the protection of farmland. Land use devoted to agriculture provides an important contribution to environmental quality, protection of the Nation's historical and archaeological resources, and scenic beauty.

Availability of Funding

Effective on the publication date of this notice, NRCS announces the availability of up to $78 million for FRPP, until September 30, 2005. The NRCS State Conservationist must receive proposals for participation within 120 days of the date of this notice. State, Tribal, and local governmental entities and nongovernmental organizations may apply. Selection will be based on the criteria established in this notice and additional criteria developed by the applicable State Conservationist. Pending offers by an eligible entity must be for acquiring an easement for perpetuity, except where State law prohibits a permanent easement.

Under the FRPP, NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement. Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer. For the entity, two cost-share options are available when providing its matching offer. One option is for the entity to provide, in cash, at least 25 percent of the appraised fair market value of the conservation easement. The second option is for the entity to provide, in cash, at least 50 percent of the purchase price of the conservation easement. The second option may be preferable to an entity in the case of a large bargain sale by the landowner. If the second option is selected, the NRCS share cannot exceed the entity's contribution.

The following two examples illustrate how these two cost-share options may function. Under Option 1, where 25 percent of the appraised fair market value is selected by the entity, the total appraised fair market value of the conservation easement is $1 million. The landowner chooses to donate 40 percent of the appraised fair market value, resulting in the actual easement purchase price being $600,000. In this case, the cooperating entity contributes $250,000, and NRCS contributes $350,000. Option 2, where 50 percent of the purchase price is selected, would occur when a landowner makes a large charitable donation, where 25% of the appraised fair market value exceeds 50 percent of the purchase price. For example, the total appraised fair market value of the conservation easement is $1 million. The landowner chooses to donate 60 percent of the appraised fair market value, resulting in the actual easement purchase price being $400,000. In this case, NRCS and the cooperating entity both contribute $200,000.

Definitions

For the purposes of this notice, the following definitions apply:

Chief means the Chief of NRCS, USDA.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. CCC provides the funding for FRPP, and NRCS administers FRPP on its behalf.

Conservation Easement means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.

Conservation Plan is the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland, and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;

(3) Is approved by the local soil conservation district in consultation with the local committees established under Section 8 (b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5909h(b)(5)) and the Secretary, or by the Secretary.

Eligible entities means Federally recognized Indian Tribes, States, units of local government, and certain non-governmental organizations, which have a farmland protection program that purchases agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to non-agricultural uses of the land. Additionally, to be eligible for FRPP, the entity must have pending offers, for acquiring conservation easements for the purpose of protecting agricultural land from conversion to non-agricultural uses.

Eligible land is privately owned land on a farm or ranch that has prime, unique, Statewide, or locally important soil, or contains historical or archaeological resources, and is subject to a pending offer by an eligible entity. Eligible land includes cropland, rangeland, grassland, and pasture land, as well as forest land that is an incidental part of an agricultural operation. Incidental forest land is less than fifty percent of the entire area under easement. Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, may be considered eligible, if inclusion of such land would significantly augment protection of the associated farm or ranch land.

Fair market value is ascertained through standard real property appraisal methods. Fair market value is the amount in cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer. Neither the seller nor the buyer act under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. In valuing conservation easements, the appraiser estimates both the fair market value of the whole property before the easement acquisition and the fair market value of the remainder property after the conservation easement has been imposed. The difference between these two values is deemed the value of the conservation easement.

Field Office Technical Guide (FOTG) is the official document for NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Historical and archaeological resources must be:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*), or

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with Section 106 of the NHPA), or

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under Section 101 (b)(1)(B) of the NHPA) or the THPO (designated under Section 101(d)(1)(C) of the NHPA).

Land Evaluation and Site Assessment System (LESA) is the land evaluation system approved by the NRCS State Conservationist used to rank land for farm and ranch land protection purposes, based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use. (For additional information see the Farmland Protection Policy Act regulation at 7 CFR part 658.)

Landowner means a person, persons, estate, corporation, or other business or nonprofit entity having fee title ownership of farm or ranch land.

Natural Resources Conservation Service is an agency of the U.S. Department of Agriculture.

Non-governmental organization is defined as any organization that:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code;

(3) Is described in section 509(a)(2) of that Code; or is described in section 509(a)(3) of that Code; and is controlled by an organization described in section 509(a)(2) of that Code.

Other productive soils are soils that are contained on farm or ranch land that is identified as farmland of Statewide or local importance and is used for the production of food, feed, fiber, forage, or oilseed crops. The appropriate State or local government agency determines Statewide or locally important farmland with concurrence from the State Conservationist. Generally, these farmlands produce high yields of crops when treated and managed according to acceptable farming methods. In some States and localities, farmlands of Statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance. 7 CFR part 657, sets forth the process for designating soils as Statewide or locally important.

Pending offer is a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

Prime and unique farmland are defined separately, as follows:

(1) Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.

(2) Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

State Technical Committee means a committee established by the Secretary of the U.S. Department of Agriculture in

a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Marianna Islands).

Overview of the Farm and Ranch Lands Protection Program

The CCC, acting through NRCS, will accept proposals submitted to the NRCS State Offices from eligible entities, including federally recognized Indian tribes, States, units of local government, and nongovernmental organizations that have pending offers for acquiring conservation easements for the purposes of protecting topsoil by limiting nonagricultural use of the land and/or protecting historical and archaeological sites on farm and ranch lands.

All proposals must be submitted to the appropriate NRCS State Conservationist within 120 days from the date of this notice. The NRCS State Conservationist may consult with the State Technical Committee (established pursuant to 16 U.S.C. 3861) to evaluate the merits of the proposals.

The NRCS State Conservationist will review and evaluate the proposals based on State, tribal, or local government or nongovernmental organization eligibility, land eligibility, and the extent to which the proposal adheres to FRPP objectives. Proposals must include adequate proof of a pending offer for the subject land. Adequate proof includes a written bid, contract, commitment, or option extended to a landowner. Pending offers based upon appraisals completed and signed by State-certified or licensed appraisers will receive higher priority for FRPP funding. Proposals submitted directly to the NRCS National Office will not be accepted and will be returned to the submitting entity.

National and State Ranking Criteria

Funding awards to participants will be based on National and State criteria. Below is a list of national criteria that will be used by the NRCS State Conservationist to evaluate proposals:

- Acreage of prime and important farm and ranch land estimated to be protected;
- Acreage of prime and important farm and ranch land converted to nonagricultural uses;
- Number or acreage of historic and archaeological sites estimated to be protected on farm or ranch lands;
- Total acres needing protection;
- FRPP cost per acre;
- Rate of land conversion;
- Percentage of funding guaranteed to be provided by cooperating entities;
- History of cooperating entities' commitments to conservation planning and implementing conservation practices;
- Participating entities' histories of acquiring, managing, holding, and enforcing easements (including average annual farmland protection easement expenditures over the past five years, accomplishments, and staff);
- Amount of FRPP funding requested; and
- Participating entities' estimated unfunded backlog of conservation easements on acres eligible for FRPP assistance.

The NRCS State Conservationist will combine the above-mentioned NRCS National criteria with NRCS State ranking criteria. The following examples of NRCS State ranking criteria may be used to evaluate and rank specific parcels, including, but not limited to, proximity to protected clusters, viability of the agricultural operations, parcel size, type of land use, maximum cost expended per acre, and an entity's commitment to assuring farm and ranch succession and transfer to viable farming operations. State ranking criteria will be developed on a State-by-State basis and will be available to interested participating entities before proposal submission. Interested entities should contact their State Conservationist for a complete listing of applicable National and State ranking criteria, and program implementation guidelines.

The NRCS State Conservationist will make awards to eligible entities based on available funds, prior to June 1, 2005. Once selected, eligible entities must work with the appropriate NRCS State Conservationist to finalize and sign cooperative agreements, incorporating all FRPP requirements.

The conveyance document (*i.e.*, conservation easement deed or conservation easement deed template) used by the eligible entity must be reviewed and approved by the USDA Office of General Counsel before being recorded. Since title to the easement is held by an entity other than the United States, the conveyance document must contain a clause that all rights conveyed by the landowner under the document will become vested in the United States should the cooperating entity abandon, fail to enforce, or attempt to terminate the conservation easement.

As a condition of participation, all highly erodible land in the easement shall be included in a conservation plan for the future management of the land. The conservation plan will be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12, unless otherwise determined by the State Conservationist, in partnership with the eligible entity. The conservation plan will be implemented in a timely manner, as determined by the State Conservationist, prior to the easement being recorded.

Organization and Land Eligibility Selection Criteria

To be eligible, a Federally recognized Indian tribe, State, unit of local government, or nongovernmental organization must have a farmland protection program that purchases conservation easements for the purpose of protecting prime, unique, or other productive soil or historical and archaeological resources by limiting conversion of farm or ranch land to nonagricultural uses. As a condition of receiving FRPP funds, the cooperating entity shall not use FRPP funds to place an easement on a property in which cooperating entity's employee, board member, or immediate family member of an employee or board member has a property interest.

Criteria for Proposal Evaluation

Proposals must contain the information set forth below in order to receive consideration for assistance:

1. Organization and programs: Eligible entities must describe their farmland protection program, and their record of acquiring and holding permanent agricultural land protection easements or other interests.

Information provided in the proposal should:

(a) Demonstrate a commitment to long-term conservation of agricultural lands through the use of voluntary easements that protect farmland from conversion to nonagricultural uses;

(b) Demonstrate the capability to acquire, manage, and enforce easements;

(c) Demonstrate the number and ability of staff that will be dedicated to monitoring easement stewardship;

(d) Demonstrate the availability of funds for the easement(s) proposed to be acquired. The purchase price may not exceed the appraised fair market value of the conservation easement. If a landowner donation is included in the entity's match, the entity must demonstrate the availability of 25 percent of the appraised fair market value or 50 percent of the purchase price; and

(e) Include pending offer(s). A pending offer is a written bid, contract,

commitment, or option extended to a landowner by an eligible entity to acquire a conservation easement that limits nonagricultural uses of the land before the legal title to these rights has been conveyed. The primary purpose of the pending offers must be for the purchase of development rights in order to protect topsoil by limiting conversion to nonagricultural uses. Pending offers having appraisals completed and signed by State-certified general appraisers will receive higher funding priority by the NRCS State Conservationist. Appraisals completed and signed by a State-certified or licensed general appraiser must contain a disclosure statement by the appraiser. The disclosure statement should include at a minimum the following: The appraiser accepts full responsibility for the appraisal, the enclosed statements are true and unbiased, the value of the land is limited by stated assumptions only, the appraiser has no interest in the land, and the appraisal conforms to the Uniform Standards of Professional Appraisal Practice or the Uniform Appraisal Standards for Federal Land Acquisitions.

2. Lands to be acquired: The proposal must describe the lands to be acquired with funding from FRPP. Specifically, the proposal must include the following:

(a) A map showing the proposed protected area(s);

(b) The amount and source of funds currently available for each easement to be acquired;

(c) The criteria used to set the acquisition priorities; and

(d) A detailed description of the land parcels, including:

(i) The priority of the offers;

(ii) The names of the landowners;

(iii) The address and location maps of the parcels;

(iv) The size of the parcels, in acres;

(v) The acres of the prime, unique, or State-wide and locally important soil in the parcels;

(vi) The number or acreage of historical or archaeological sites, if any, proposed to be protected, and a brief description of the sites' significance;

(vii) A map showing the location of other protected parcels in relation to the land parcels proposed to be protected;

(viii) Estimated cost of the easement(s): The consideration to be paid to any landowners for the conveyance of any lands or interests in lands cannot be more than the fair market value of the land or interests conveyed, as determined by an appraiser licensed in the State, in which the parcel is located.

(ix) An example of the cooperating entity's proposed easement deed used to prevent agricultural land conversion;

(x) Indication of the accessibility to markets;

(xi) Indication of an existing agricultural infrastructure, on- and off-farm, and other support system(s);

(xii) Statement regarding the level of threat from urban development;

(xiii) A description of the eligible entity's farmland protection strategy and how the FRPP proposal submitted by the entity corresponds to the entity's strategic plan;

(xiv) Other factors from an evaluation and assessment system used to set priorities. If the eligible entity used the LESA system or a similar land evaluation system as its tool, include the scores for the land parcels slated for acquisition;

(xv) Other partners involved in acquisition of the easement and their estimated financial contribution; and

(xvi) Other information that may be relevant as determined by the NRCS State Conservationist.

Ranking Considerations

When the NRCS State Office has assessed organization eligibility and the merits of each proposal, the NRCS State Conservationist will determine whether the farm or ranch land is eligible for financial assistance from FRPP. NRCS will use the National and State criteria, which may include a LESA system or other similar system, to evaluate the land and rank the parcels.

NRCS will only consider enrolling eligible land in the program that is of sufficient size and has boundaries that allow for efficient management of the area. The land must have access to markets for its products and an infrastructure appropriate for agricultural production. NRCS will not enroll land in FRPP that is owned in fee title by an agency of the United States, is publicly-owned land, or land that is already subject to an easement or deed restriction that limits non-agricultural conversion of farm and ranch land.

NRCS will not enroll otherwise eligible lands if NRCS determines that the protection provided by the FRPP would not be effective because of on-site or off-site conditions. For example, as it relates to on-site conditions, a proposal may nominate a parcel that contains hazardous material, or it may nominate a parcel that contains or may allow over two percent impervious surface coverage on the land under easement. The presence of hazardous waste or the extensive impervious surface coverage will likely cause NRCS to determine that the use of FRPP funds is not appropriate. As it relates to off-site conditions, NRCS may avoid acquiring land that is surrounded by a developed area or slated to be zoned for development by a local government.

NRCS will place a priority on acquiring easements that provide permanent protection from conversion to nonagricultural use. NRCS will place a higher priority on easements acquired by entities that have extensive experience in managing and enforcing easements. NRCS may place a higher priority on lands and locations that help create a large tract of protected area for viable agricultural production and that are under increasing urban development pressure. NRCS may place a higher priority on lands and locations that correlate with the efforts of Federal, State, Tribal, local, or nongovernmental organizations' efforts that have complementary farmland protection objectives (*e.g.*, open space or watershed and wildlife habitat protection). NRCS may place a higher priority on lands that provide special social, economic, and environmental benefits to the region. A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve National, State, and regional goals and objectives, or enhance existing government or private conservation projects.

Cooperative Agreements

The CCC, through NRCS, enters into a cooperative agreement with a selected eligible entity to document participation in FRPP. The cooperative agreement will address, among other subjects:

(1) The easement type, terms, and conditions;

(2) The management and enforcement of the rights acquired;

(3) The role and responsibilities of NRCS and the cooperating entity;

(4) The responsibilities of the easement manager on lands acquired with FRPP assistance; and

(5) Other requirements deemed necessary by the CCC, acting through NRCS, to protect the interests of the United States. The cooperative agreement will also include an attachment listing the pending offers accepted in FRPP, landowners' names, addresses, location map(s), and other relevant information. Interested entities should contact their State Conservationist for a copy of a draft cooperative agreement before submitting an application.

Signed in Washington, DC, on November 12, 2004.

Bruce I. Knight,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

NRCS State Conservationists

Alabama: Robert N. Jones, 3381 Skyway Drive, Post Office Box 311, Auburn, AL 36830; phone: (334) 887–4500; fax: (334) 887–4552; *robert.jones@al.usda.gov.*

Alaska: Shirley Gammon, Atrium Building, Suite 100, 800 West Evergreen, Atrium Building, Suite 100, Palmer, AK 99645–6539; phone: (907) 761–7760; fax: (907) 761–7790; *sgammon@ak.nrcs.usda.gov.*

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Arkansas: Kalven L. Trice, Federal Building, Room 3416, 700 West Capitol Avenue, Little Rock, AR 72201–3228; phone: (501) 301–3100; fax: (501) 301–3194; *kalven.trice@ar.usda.gov.*

California: Charles W. Bell, Suite 4164, 430 G Street, Davis, California 95616–4164; phone: (530) 792–5600; fax: (530) 792–5790; *charles.bell@ca.usda.gov.*

Colorado: James Allen Green, Room E200C, 655 Parfet Street, Lakewood, CO 80215–5521; phone: (720) 544–2810; fax: (720) 544–2965; *allen.green@co.usda.gov.*

Connecticut: Margo L. Wallace, 344 Merrow Road, Tolland, Connecticut 06084; phone: (860) 871–4011; fax: (860) 871–4054; *margo.wallace@ct.usda.gov.*

Delaware: Ginger Murphy, Suite 101, 1203 College Park Drive, Suite 101, Dover, DE 19904–8713; phone: (302) 678–4160; fax: (302) 678–0843; *ginger.murphy@usda.gov.*

Florida: T. Niles Glasgow, 2614 N.W. 43rd Street, Gainesville, FL 32606–6611, or Post Office Box 141510, Gainesville, FL 32606–6611; phone: (352) 338–9500; fax: (352) 338–9574; *niles.glasgow@fl.usda.gov.*

Georgia: Leonard Jordan, Federal Building, Stop 200, 355 East Hancock Avenue, Athens, GA 30601–2769; phone: (706) 546–2272; fax: (706) 546–2120; *leonard.jordan@ga.usda.gov.*

Guam: Joan B. Perry, Director, Pacific Basin Area, Suite 301, FHB Building, 400 Route 8, Mongmong, G U 96910; phone: (671) 472–7490; fax: (671) 472–7288; *joan.perry@pb.usda.gov.*

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Illinois: William J. Gradle, 2118 W. Park Court, Champaign, IL 61821; phone: (217) 353–6600; fax: (217) 353–6676; *bill.gradle@il.usda.gov.*

Indiana: Jane E. Hardisty, 6013 Lakeside Boulevard, Indianapolis, IN 46278–2933; phone: (317) 290–3200; fax: (317) 290–3225; *jane.hardisty@in.usda.gov.*

Iowa: Richard VanKlaveren, 693 Federal Building, Suite 693, 210 Walnut Street, Des Moines, IA 50309–2180; phone: (515) 284–6655; fax: (515) 284–4394; *rvanklaveren@ia.usda.gov.*

Kansas: Harold Klaege, 760 South Broadway, Salina, KS 67401–4642; phone: (785) 823–4565; fax: (785) 823–4540; *harold.klaege@ks.usda.gov.*

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Louisiana: Donald W. Gohmert, 3737 Government Street, Alexandria, LA 71302; phone: (318) 473–7751; fax: (318) 473–7626; *don.gohmert@la.usda.gov.*

Maine: Joyce Swartzendruber, Suite 3, 967 Illinois Avenue, Bangor, ME 04401; phone: (207) 990–9100, ext. 3; fax: (207) 990–9599; *joyce.swartzendruber@me.usda.gov.*

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Massachusetts: Cecil B. Currin, 451 West Street, Amherst, MA 01002–2995; phone: (413) 253–4351; fax: (413) 253–4375; *cecil.currin@ma.usda.gov.*

Michigan: John Bricker, Suite 250, 3001 Coolidge Road, East Lansing, MI 48823–6350; phone: (517) 324–5270; fax: (517) 324–5171; *john.bricker@mi.usda.gov.*

Minnesota: William Hunt, Suite 600, 375 Jackson Street, St. Paul, MN 55101–1854; phone: (651) 602–7900; fax: (651) 602–7913 or 7914; *william.hunt@mn.usda.gov.*

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North Dakota: J.R. Flores, Room 278, 220 E. Rosser Avenue, Post Office Box 1458, Bismarck, ND 58502–1458; phone: (701) 530–2000; fax: (701) 530–2110; *jr.flores@nd.usda.gov.*

Ohio: John Wilson (Acting), Room 522, 200 North High Street, Columbus, OH 43215–2478; phone: (614) 255–2500; fax: (614) 255–2548; *john.wilson@oh.usda.gov.*

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Puerto Rico: Juan A. Martinez, Director, Caribbean Area, IBM Building, Suite 604, 654 Munoz Rivera Avenue, Hato Rey, PR 00918–4123; phone: (787) 766–5206; fax: (787) 766–6563; *juan.martinez@pr.usda.gov.* Rhode Island: Judith Doerner, Suite 46, 60 Quaker Lane, Warwick, RI 02886–0111; phone: (401) 828–1300; fax: (401) 828–0433; *judith.doerner@ri.usda.gov.*
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Vermont: Francis M. Keeler, 356 Mountain View Drive, Suite 105, Colchester, VT 05446; phone: (802) 951–6795; fax: (802) 951–6327; *fran.keeler@vt.usda.gov.*
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BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request Food Stamp Program Form FNS–521, Food Coupon Deposit Document

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service is publishing for public comment a summary of a proposed information collection. The proposed collection is an extension of a currently approved collection of the Food Stamp Program for which approval expires on December 31, 2004. The Food Stamp Act of 1977, as amended, requires that all verified and encoded redemption certificates accepted by insured financial institutions from authorized retail food stores shall be forwarded with the corresponding coupon deposits to the Federal Reserve Bank along with the accompanying Food Coupon Deposit Document (Form FNS–521). Requirements in the Food Stamp Program regulations are the basis for the information collected on Form FNS–521.

The Food and Nutrition Service is rapidly phasing out the use of paper food coupons. Currently, 99.9 percent of all food stamp benefits are issued electronically. Forty-eight States, the District of Columbia, the Virgin Islands, Guam, and Puerto Rico have online operating Electronic Benefit Transfer (EBT) systems. Two States operate offline food stamp EBT systems and issue paper food coupons to recipients who move out of State and have remaining food stamp benefits. Many States have already closed out their coupon inventory completely and more will be doing the same in the upcoming year. Approximately 18,140 Food Coupon Deposit Documents were processed by financial institutions in Fiscal Year 2004 and the number continues to decline due to 100 percent EBT implementation. Until all of the paper food coupons issued are redeemed, the Food Coupon Deposit Document will remain an essential document to the food stamp redemption process.

DATES: Comments on this notice must be received by February 4, 2005, to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to: Andrea Gordon, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, U. S. Department of Agriculture, 3101 Park Center Drive, Room 404, Alexandria, VA 22302. Comments may also be faxed to (703) 305–1863 or e-mailed to: *brdhq-web@fns.usda.gov*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Andrea Gordon, (703) 305–2456.

SUPPLEMENTARY INFORMATION:

Title: Food Coupon Deposit Document.

OMB Number: 0584–0314.

Expiration Date: December 31, 2004.

Type of Request: Extension of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal Agency responsible for the Food Stamp Program. The Food Stamp Act of 1977, as amended, (the Act) requires that FNS provide for the redemption, through financial institutions, of food coupons accepted by retail food stores from program participants. Section 278.5 of the Food Stamp Program regulations governs financial institution and

Federal Reserve participation in the food coupon redemption process.

Form FNS–521, Food Coupon Deposit Document (FCDD) is required to be used by all financial institutions when they deposit food coupons at Federal Reserve Banks. Without the FCDD, no vehicle would exist for financial institutions, Federal Reserve Banks, and the FNS to track deposits of food coupons.

Respondents: Financial institutions and Federal Reserve Banks.

Number of Respondents: 10,000.

Estimated Annual Number of Responses per Respondent: The number of responses is estimated to be 1.814 responses per financial institution or Federal Reserve Bank per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0097222 hours per response.

Estimated Total Annual Burden: 176 hours.

Dated: November 30, 2004.

Jerome A. Lindsay,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 04–26680 Filed 12–3–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Child and Adult Care Food Program: Increasing the Duration of Tiering Determinations for Day Care Homes

AGENCY: Food and Nutrition Service, USDA/FNS.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service (FNS) intention to request Office of Management and Budget (OMB) review of the information collection related to the Child and Adult Care Food Program, including adjustments to be made as a result of the final rule, Child and Adult Care Food Program: Increasing the Duration of Tiering Determinations for Day Care Homes.

DATES: To be assured of consideration, comments must be received by February 4, 2005.

ADDRESSES: Send comments and requests for copies of this information collection to: Mr. Keith Churchill, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 636, Alexandria, Virginia 22302. Comments will also be accepted via E-Mail submission if sent to *CNDPROPOSAL@FNS.USDA.GOV*. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION: Contact Mr. Keith Churchill, (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: Child and Adult Care Food Program Regulations.

OMB Number: 0584–0055.

Expiration Date: June 30, 2007.

Type of Request: Revision of a currently approved collection.

Abstract: The Rule amends the Child and Adult Care Food Program (CACFP) regulations to implement Section 199(b) of the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265, which amended Section 17(f)(3)(E)(iii) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)(E)(iii) to increase the duration of the tiering status determinations from three to five years for family or group day care homes participating in CACFP. This change, which was effective on June 30, 2004, applies to tiering status determinations for day care homes located in the attendance areas of elementary schools in which at least half of the enrolled children are certified eligible to receive free or reduced price school meals. The change also applies to tiering determinations for day care homes operated by providers whose households meet the eligibility guidelines for free or reduced price school meals. Day care home providers receive higher reimbursement rates (tier 1) for CACFP meals served to children in care in those homes.

Estimate of Burden: This change reduces the number of respondents per year by 768.

Estimated Number of Respondents: 2,929,699 respondents.

Average Number of Responses per Respondent: 2.25 responses/respondent.

Estimated Total Annual Burden on Respondents: 5,781,262 burden hours.

Dated: November 24, 2004.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 04–26691 Filed 12–3–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request an extension for a currently approved information collection procedure for entry of specialty sugars into the United States as described in 7 CFR part 2011.

DATES: Comments should be received on or before February 4, 2005 to be assured of consideration.

ADDRESSES: Mail or deliver comments to Ron Lord, Deputy Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, 1400 Independence Ave. SW., Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: Ron Lord, at the address above, or telephone at (202) 720–2916 or e-mail at *Ronald.Lord@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Specialty Sugar Import Certificates.

OMB Number: 0551–0025.

Expiration Date of Approval: February 28, 2005.

Type of Request: Extension of a currently approved information collection.

Abstract: The quota system established by Presidential Proclamation 4941 of May 5, 1982, prevented the importation of certain sugars used for specialized purposes which originated in countries which did not have quota allocations. Therefore, the regulation at 15 CFR part 2011 (Allocation of Tariff-Rate Quota on Imported Sugars, Syrups and Molasses,

subpart B—Specialty Sugar) established terms and conditions under which certificates are issued permitting U.S. importers holding certificates to enter specialty sugars from specialty sugar source countries under the sugar tariff-rate quotas (TRQ). Nothing in this subpart affects the ability to enter specialty sugars at the over-TRQ duty rates. Applicants for certificates for the import of specialty sugars must supply the information required by 15 CFR 2011.205 to be eligible to receive a specialty sugar certificate. The specific information required on an application must be collected from those who wish to participate in the program in order to grant specialty sugar certificates, ensure that imported specialty sugar does not disrupt the current domestic sugar program, and administer the issuance of the certificates effectively.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Importers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 60 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments: The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but should be submitted no later than 60 days from the date of this publication to be assured of consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Signed at Washington, DC, on November 24, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–26671 Filed 12–3–04; 8:45 am]

BILLING CODE 3410–10–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: December 8, 2004 3 p.m.–5 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 203–203–4545.

Dated: December 1, 2004.

Carol Booker,

Legal Counsel.

[FR Doc. 04–26813 Filed 12–2–04; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2004 Science and Technology Quality Review Panel. The purpose of the meeting is to allow the Air Force Scientific Advisory Board to assess the quality and long-term relevance of Air Force Research Laboratory research reviewed in Fall 2004. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: December 10, 2004.

ADDRESSES: 1560 Wilson Blvd, Suite 400, Arlington VA 22209–2404.

FOR FURTHER INFORMATION CONTACT: Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4808.

Albert T. Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–26694 Filed 12–3–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Air Force Scientific Advisory Board. The purpose of the meeting is to brief the Secretary of the Air Force. This meeting will be closed to the public.

DATES: December 7, 2004.

ADDRESSES: Pentagon, Washington DC.

FOR FURTHER INFORMATION CONTACT: Maj Chris Berg, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Albert F. Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–26707 Filed 12–3–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the

proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 4, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 30, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: William D. Ford Federal Direct Loan (Direct Loan) Program Electronic Debit Account Application and Brochure.

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses—234,700. *Burden Hours*—7,816.

Abstract: A Direct Loan borrower uses this application to request and authorize the automatic deduction of monthly student loan payments from his or her checking or savings account.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2648. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–3474 Filed 12–3–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Intent To Grant Exclusive or Partially Exclusive Patent License

AGENCY: National Energy Technology Laboratory (NETL, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Notice is hereby given of an intent to grant to Mobotecusa at Orinda, California, an exclusive or partially exclusive license to practice the invention described in the U.S. patent number 6,521,021, ''Thief Process for the Removal of Mercury from Flue Gas.'' The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than December 21, 2004.

ADDRESSES: Diane Newlon, Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Diane Newlon, Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880; Telephone (304) 285–4086; E-mail: *newlon@netl.doe.gov.*

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the DOE with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Mobotecusa, a small business, located at Orinda, California, has applied for an exclusive or partially exclusive license to practice the invention and has a plan for commercialization of the invention.

DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 15 days of publication of this Notice the Technology Transfer Manager, Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880, receives in writing any of the following, together with the supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 15-day notice period, and after consideration of any written responses to this notice, a

determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued: November 23, 2004.

Rita A. Bajura,

Director, National Energy Technology Laboratory.

[FR Doc. 04–26713 Filed 12–3–04; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1188–034, et al.]

LG&E Energy Marketing Inc., et al.; Electric Rate and Corporate Filings

November 26, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. LG&E Energy Marketing Inc., Louisville Gas & Electric Company & Kentucky Utilities Company, WKE Station Two Inc., Western Kentucky Energy Corporation

[Docket Nos. ER94–1188–034, ER98–4540–003, ER99–1623–003, ER98–1278–009, ER98–1279–005]

Take notice that on November 19, 2002, LG&E Energy Marketing Inc., (LEM) Louisville Gas & Electric Company, Kentucky Utilities Company, WKE Station Two Inc., and Western Kentucky Energy Corporation tendered for filing an updated market power analysis in compliance *Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004).

Comment Date: 5 p.m. eastern time on December 10, 2004.

2. Puget Sound Energy, Inc.

[Docket No. ER99–845–006]

Take notice that on November 19, 2004, Puget Sound Energy, Inc. (Puget) filed with the Federal Energy Regulatory Commission a revised Market Based Rate Tariff to incorporate the Market Behavior Rules contained in the November 17, 2003 *Order Amending Market-Based Tariffs and Authorizations,* 105 FERC ¶ 61,218 (2003).

Comment Date: 5 p.m. eastern time on December 10, 2004.

3. Neptune Regional Transmission System, LLC

[Docket No. ER01–2099–003]

Take notice that on November 18, 2004 Neptune Regional Transmission, LLC (Neptune) submitted for filing a Report on Open Season in compliance with the Commission's order issued July 27, 2001 in *Neptune Regional Transmission System, LLC,* 96 FERC ¶ 61,147 (2001).

Comment Date: 5 p.m. eastern time on December 8, 2004.

4. Ameren Corp.

[Docket No. ER04–931–003]

Take notice that on November 19, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) amended its October 12, 2004 filing in Docket No. ER04–931–000.

Midwest ISO states that copies of the filing were served upon the service list compiled by the Secretary in Docket No. ER04–931–000.

Comment Date: 5 p.m. eastern time on December 10, 2004.

5. Reliant Energy Etiwanda, Inc.

[Docket No. ER05–138–001]

Take notice that on November 18, 2004, Reliant Energy Etiwanda. Inc. (Etiwanda) tendered for filing the Information Package summarizing information previously provided to the California Independent System Operator Corporation (CAISO) and other interested parties on November 1, 2004, pursuant to Schedule F, Article I, Part B of the Must-Run Service Agreement dated June 24, 2004, between Reliant Energy Etiwanda, Inc. and the California Independent System Operator Corporation. *See* Etiwanda's Rate Schedule FERC No. 2, Must-Run Service Agreement between Etiwanda and the CAISO, Original Sheet No. 175 (filed in Docket No. ER04–959–000, June 25, 2004).

Etiwanda states that this filing has been served upon the CAISO, the California Public Utilities Commission, the California Electricity Oversight Board and Southern California Edison Company.

Comment Date: 5 p.m. eastern time on December 16, 2004.

6. Reliant Energy Etiwanda, Inc.

[Docket No. ER05–138–002]

Take notice that on November 19, 2004, Reliant Energy Etiwanda, Inc. (Etiwanda) tendered for filing revised sheets for certain of the schedules to the Must-Run Service Agreement dated June 24, 2004, between Reliant Energy Etiwanda, Inc. and the California Independent System Operator Corporation (Must-Run Service Agreement), reflecting minor changes to the Must-Run Service Agreement schedules filed in the captioned docket on November 1, 2004, as well as a revised Information Package in accordance with Schedule F, Article I, Part B of the Must-Run Service Agreement. See Etiwanda's Rate Schedule FERC No. 2, Must-Run Service Agreement between Etiwanda and the CAISO, Original Sheet No. 175 (filed in Docket No. ER04–959–000, June 25, 2004). Etiwanda requests an effective date of January 1, 2005.

Etiwanda states that this filing has been served upon the California Independent System Operator Corporation, the California Public Utilities Commission, the California Electricity Oversight Board and Southern California Edison Company.

Comment Date: 5 p.m. eastern time on December 16, 2004.

7. Ohio Valley Electric Corporation

[Docket No. ER05–242–000]

Take notice that on November 19, 2004, Ohio Valley Electric Corporation (OVEC) tendered for filing revisions to its Open Access Transmission Tariff to incorporate the *pro forma* Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA), without modification, in compliance with the Commission's Orders 2003 and 2003–A on Standardization of Generator Interconnection Agreements and Procedures. OVEC has requested an effective date of April 26, 2004.

OVEC states that a copy of this filing has been mailed to OVEC's jurisdictional customers and to each State public service commission that, to the best of OVEC's knowledge, has retail jurisdiction over such customers.

Comment Date: 5 p.m. eastern time on December 10, 2004.

8. Western Electricity Coordinating Council

[Docket No. ER05–243–000]

Take notice that on November 19, 2004, Western Electricity Coordinating Council (WECC) tendered for filing a request for approval of certain amendments to WECC Rate Schedule FERC No. 1, the WECC Bylaws. WECC states that the amendments reflect changes to the WECC Bylaws adopted by vote of the WECC Board of Directors on July 29, 2004, with additional minor modifications for consistency and formatting purposes. WECC requests an effective date of September 27, 2004.

Comment Date: 5 p.m. eastern time on December 10, 2004.

9. American Electric Power Service Corporation

[Docket No. ER05–244–000]

Take notice that on November 19, 2004, American Electric Power Service

Corporation (AEPSC) submitted for filing a letter agreement that provides for AEPSC to begin engineering, equipment procurement and construction work on the interconnection facilities and network upgrades required to interconnect to the AEP transmission system the wind power project being developed by FPL Energy Cowboy Wind, LLC. AEPSC requests an effective date of November 5, 2004 for the agreement.

AEPSC served copies of the filing on FPL Energy Cowboy Wind, LLC.

Comment Date: 5 p.m. eastern yime on December 10, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3462 Filed 12–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–21–000, et al.]

Reliant Energy Wholesale Generation, LLC, et al.; Electric Rate and Corporate Filings

November 29, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Reliant Energy Wholesale Generation, LLC

[Docket No. EC05–21–000]

Take notice that on November 23, 2004, Reliant Energy Wholesale Generation, LLC, (Applicant) submitted an application pursuant to section 203 of the Federal Power Act, seeking authorization for the disposition of the Applicant's jurisdictional assets that would result from a proposed transfer of certain generator interconnection facilities to the Nevada Power Company (NPC) and requesting expedited consideration of its Application and certain waivers. Applicant states that pursuant to an agreement entered into by Applicant's predecessor and NPC, Applicant's predecessor would construct the interconnection facilities and subsequently transfer ownership and control of the interconnection facilities to NPC. Applicant further states that transferring these facilities to NPC will allow NPC to operate the interconnection facilities in an integrated manner with its transmission system.

Comment Date: 5 p.m. eastern time on December 9, 2004.

2. PEI Power Corp.

[Docket No. ER98-2270-005]

Take notice that on November 22, 2004, PEI Power Corp. (PEI) submitted for filing an amendment to PEI's triennial updated market power analysis. PEI states that this analysis supports the continuation of PEI's authority to make sales at market-based rates. PEI also submits revisions to its market-based rate tariff, which incorporate a statement that PEI Power will not sell to any affiliate with a franchised electric service territory without first receiving approval from the Commission pursuant to a separate filing under section 205 of the Federal Power Act.

Comment Date: 5 p.m. eastern time on December 6, 2004.

3. California Independent System Operator Corporation, Pacific Gas and Electric Company, San Diego Gas & Electric Company v. California Independent System Operator Corporation

[Docket No. ER01–313–006, ER01–424–006, EL03–131–003]

Take notice that on November 22, 2004, California Independent System Operator Corporation (ISO), submitted a Notice of Withdrawal of its November 15, 2004, compliance refund report filed pursuant to the Commission's Orders in *California Independent System Operator Corporation,* 103 FERC ¶ 61,114 (2003); *on reh'g,* 106 FERC ¶ 61,032 (2004).

Comment Date: 5 p.m. eastern time on December 13, 2004.

4. AES Red Oak, L.L.C.

[Docket No. ER01–2401–002]

Take notice that on November 22, 2004, AES Red Oak, L.L.C. (Red Oak) submitted for filing its revised triennial market power update in compliance with the Commission's letter order issued November 20, 2001, in Docket No. ER01–2401–001, *AEP Power Marketing, Inc., et al.,* 107 FERC ¶ 61,018, *on reh'g,* 108 FERC ¶ 61,026 (2004). Red Oak also submitted for filing amendments to its market-based rate tariff implementing six (6) new market behavior rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization,* 105 FERC ¶ 61,128 (2003). In addition, Red Oak submitted for approval a second revision to FERC Electric Tariff, Original Volume No. 1, and a second revision to Red Oak's Statement of Policy and Code of Conduct.

Comment Date: 5 p.m. eastern time on December 13, 2004.

5. Southern California Water Company

[Docket No. ER02–2400–002]

Take notice that on November 22, 2004, Southern California Water Company submitted a notice of change in status pursuant to the Commission's order granting market-based rate authority, *Southern California Water Company,* 100 FERC ¶ 61,373 (2002).

Comment Date: 5 p.m. eastern time on December 13, 2004.

6. ONEOK Energy Services Company, L.P.

[Docket No. ER03–10–003]

Take notice that on November 22, 2004, ONEOK Energy Services Company, L.P. (OSEC), formerly known as ONEOK Energy Marketing and Trading Company, L.P., submitted an

amendment to its updated market power analysis filed on August 17, 2004.

Comment Date: 5 p.m. eastern time on December 13, 2004.

7. San Diego Gas & Electric Company

[Docket No. ER04–1126–001]

Take notice that on November 22, 2004, San Diego Gas & Electric Company (SDG&E) tendered for filing an errata to adjust its California Independent System Operator (CAISO) Base Transmission Revenue Requirements in accordance with approved revised tariff changes to its Transmission Formula Rate as reflected in its Transmission Owner Tariff, FERC Electric Tariff, Original Volume No. 11.

SDG&E states that copies of the filing have been served on the California Public Utilities Commission and the CAISO.

Comment Date: 5 p.m. eastern time on December 13, 2004.

8. AES Red Oak, L.L.C.

[Docket No. ER01-2401-002]

Take notice that on November 22, 2004, AES Red Oak, L.L.C. (Red Oak) submitted for filing its revised triennial market power update in compliance with the Commission's letter order issued November 20, 2001 in Docket No. ER01–2401–001, *AEP Power Marketing, Inc., et al.,* 107 FERC ¶ 61,018, *on reh'g,* 108 FERC ¶ 61,026 (2004). Red Oak also submitted for filing amendments to its market-based rate tariff implementing six (6) new market behavior rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization,* 105 FERC ¶ 61,128 (2003). In addition, Red Oak submitted for approval a second revision to FERC Electric Tariff, Original Volume No. 1, and a second revision to Red Oak's Statement of Policy and Code of Conduct.

Comment Date: 5 p.m. eastern time on December 13, 2004.

9. Southern California Edison Company

[Docket No. ER04–1159–001]

Take notice that on November 22, 2004, Southern California Edison Company (SCE) submitted a compliance filing pursuant to the Commission's letter order issued October 27, 2004, in the Docket No. ER04–1159–000.

SCE states that copies of the filing were served on parties on the official service list in the above-captioned proceeding and on each affected customer.

Comment Date: 5 p.m. eastern time on December 13, 2004.

10. Midwest Independent Transmission System Operator, Inc., American Transmission Company LLC

[Docket No. ER04–1160–001]

Take notice that on November 24, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and American Transmission Company, LLC (collectively, Applicants) submitted an amendment to their August 30, 2004, filing regarding proposed changes to the liability limitation provisions in the Midwest ISO's OATT. Midwest ISO states that the amendment was filed in response to the Commission's October 28, 2004, deficiency letter. In addition, Midwest ISO states that they have filed a Notice of Withdrawal of a proposed tariff sheet regarding a change to the Midwest ISO OATT's Indemnification provision that was submitted on August 30, 2004.

Midwest ISO states that they have served a copy of the filing upon all parties on the official service in this docket.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all State commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on December 7, 2004.

11. Southern Company Services, Inc.

[Docket No. ER04–1161–002]

Take notice that on November 22, 2004, Southern Company Services, Inc. (SCS), on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively Southern Companies), submitted a compliance filing pursuant to the Commission's order issued October 22, 2004, in Docket No. ER04–1161.

SCS states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on December 13, 2004.

12. Wisconsin Public Service Corporation

[Docket No. ER05–245–000]

Take notice that on November 22, 2004, Wisconsin Public Service Corporation (WPSC) tendered for filing a revised rate schedule sheet (Revised Sheet) in Exhibit G to WPSC's rate schedule with the City of Marshfield. The Revised Sheet modifies the capacity ratings of the West Marinette Unit 33. WPSC requests an effective date of January 1, 2005.

WPSC states that copies of the filing were served upon the City of Marshfield, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment Date: 5 p.m. eastern time on December 13, 2004.

13. Southern California Edison Company

[Docket No. ER05–246–000]

Take notice that on November 22, 2004, Southern California Edison Company (SCE) submitted for filing an Interconnection Facilities Agreement (Interconnection Agreement), Service Agreement No. 127, under SCE's Wholesale Distribution Access Tariff (WDAT), FERC Electric Tariff, First Revised Volume No. 5, and an associated Service Agreement for Wholesale Distribution Service (WDAT Service Agreement), Service Agreement No. 128, under the WDAT, between SCE and the City of Moreno Valley, California (Moreno Valley). SCE states that the purpose of the Interconnection Agreement and the WDAT Service Agreement is to specify the terms and conditions under which SCE will provide Wholesale Distribution Service from the California Independent System Operator Controlled Grid at SCE's Valley Substation to a new SCE–Moreno Valley 12 kV interconnection at Moreno Valley owned property located on the corner of Frederick Avenue and Alessandro Boulevard in the City of Moreno Valley, California.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and Moreno Valley.

Comment Date: 5 p.m. eastern time on December 13, 2004.

14. Western Systems Power Pool, Inc.

[Docket No. ER05–249–000]

Take notice that on November 22, 2004, the Western Systems Power Pool, Inc. (WSPP) requested the Commission to amend the WSPP Agreement to include Merrill Lynch Commodities, Inc. (MLCI) as a participant. WSPP

requests an effective date of October 22, 2004.

WSPP states that copies of this filing will be served upon Keith Bailey, Chief Operating Officer of MLCI, and Catherine Krupka and Donna Sauter of McDermott Will & Emergy, counsel to MLCI. WSPP further states that in addition, copies will be emailed to WSPP members who have supplied e-mail addresses for the Contract Committee and Contacts lists which will reach most if not all active members. WSPP indicates that this filing also has been posted on the WSPP home page (*http://www.wspp.org*) thereby providing notice to all WSPP members.

Comment Date: 5 p.m. eastern time on December 13, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3465 Filed 12–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Provo River Project Rate Order No. WAPA–116

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order concerning a power rate formula.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–116, placing a rate formula for the Provo River Project (Project) of Western Area Power Administration (Western) into effect on an interim basis. The provisional power rate formula will remain in effect on an interim basis until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places it into effect on a final basis, or until the power rate formula is replaced by another power rate formula.

DATES: The provisional rate formula extension will be placed into effect on an interim basis on April 1, 2005, and will be in effect until the Commission confirms, approves, and places the provisional rate formula extension in effect on a final basis for 5 years ending March 31, 2010, or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Bradley S. Warren, CRSP Manager, CRSP Management Center, Western Area Power Administration, PO Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493, or Ms. Carol Loftin, Rates Manager, CRSP Management Center, Western Area Power Administration, PO Box 11606, Salt Lake City, UT 84147–0606, (801) 524–6380, e-mail *loftinc@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Project was authorized in 1935. Construction on the Project, which includes Deer Creek Dam and Powerplant on the Provo River in Utah, began in 1938 but, because of World War II, was not completed until 1951. The powerplant, authorized on August 20, 1951, was completed and generation began in 1958. Its maximum operating capacity is 5,300 kilowatts.

Provo River Project power is now marketed independently from the Salt Lake City Area Integrated Projects subsequent to a marketing plan that was approved and published in the **Federal Register** on November 21, 1994. This marketing plan allows Western to market the output of the Project to customers of the Utah Municipal Power Agency and the Utah Associated Municipal Power Systems (Customers) in the Provo River drainage area.

Contract Nos. 94–SLC–0253 and 94–SLC–0254 between the United States and its Customers require that the amount of each annual installment be established in advance by Western and submitted to the Customers on or before August 31 of the year preceding the appropriate fiscal year. Each fiscal year, Western will estimate the Deer Creek Powerplant (DCP) expenses by preparing a power repayment study, which will include estimates of operation, maintenance, and replacement costs for the DCP.

Each annual installment pays the annual amortized portion of the United States investment in the Deer Creek Dam and Reservoir hydroelectric facilities with interest and the associated operation, maintenance, and replacement costs. This repayment schedule does not depend upon the power and energy made available for sale or the rate of generation each year, but is included in the contract in which the Customers pay all operating, maintenance, and replacement expenses of the Project and, in return, receive all of the energy produced by the Project. Western will continue to provide the Customers a revised annual installment by August 31 of each year using the same methodology.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835).

Under Delegation Order Nos. 00–037.00 and 00–001.00A, 10 CFR 903, and 18 CFR 300, I hereby confirm, approve, and place Rate Order No. WAPA–116 into effect on an interim basis. The extension of the rate formula will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: November 22, 2004.

Kyle E. McSlarrow,

Deputy Secretary.

In the matter of: Western Area Power Administration Power Rate Formula Extension for the Provo River Project; Order Confirming, Approving, and Placing a Rate Formula Extension for the Provo River Project Into Effect on an Interim Basis.

This rate was established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the Provo River Project (PRP).

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR 903) were published on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

CRSP: Colorado River Storage Project.

Commission: Federal Energy Regulatory Commission.

Contracts: Contract No. 94–SLC–0254 with UMPA effective December 22, 1994, and Contract No. 94–SLC–0253 with UAMPS effective January 19, 1995, which were extended to September 30, 2024.

Customers: UMPA and UAMPS.

DCP: Deer Creek Powerplant.

DOE: Department of Energy.

DOE Order RA 6120.2: A Department of Energy order dealing with power marketing administration financial reporting and ratemaking procedures.

FY: Fiscal year; October 1 to September 30.

Interior: United States Department of the Interior.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

OM&R: Operation, Maintenance, and Replacement.

PRP: Provo River Project.

PRS: Power repayment study.

PRWUA: Provo River Water Users Association.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

SLCA/IP: Salt Lake City Area Integrated Projects. The resources and revenue requirements of the Collbran, Dolores, Rio Grande, and Seedskadee projects blended together with the CRSP to create the SLCA/IP resources and rate.

UAMPS: Utah Associated Municipal Power Systems.

UMPA: Utah Municipal Power Agency.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

This power rate formula will become effective on an interim basis beginning April 1, 2005, and will be in effect pending the Commission's approval of this or a substitute rate formula on a final basis for 5 years ending March 31, 2010, or until superseded.

Public Notice and Comment

Paragraph 903.23(a) of 10 CFR 903 for rate extensions does not require either a consultation and comment period, or public information or comment forums. This request is for approval of an extension of the present methodology used for calculating the annual installment. On April 14, 2004, Western met with the Customers and notified them of Western's intent to extend the present rate formula. Western also discussed the FY 2005 budget and capital expenditures. The Customers expressed their desire to continue using the rate formula methodology through notifications dated July 20, 2004, and August 26, 2004.

Project Description

Construction of the PRP began in May 1938, and the powerplant was completed in 1958. Presently, it has a generating capacity of 5,300 kW of power. Only energy excess to PRP purposes has been available for Federal marketing. Between 1963 and 1994, SLCA/IP needed additional energy and purchased the available PRP energy at an amount established annually for the PRP to cover its costs, including OM&R and repayment expenses. These expenses included $1.6 million of irrigation assistance to the PRWUA. PRP's original power investment has been repaid.

PRP power is now marketed independently from the SLCA/IP under a marketing plan published in the **Federal Register** on November 21, 1994. This marketing plan allows Western to market the output of the PRP to customers of UMPA and UAMPS in the Provo River drainage area.

Power Repayment Studies

Each fiscal year, Western will estimate DCP expenses by preparing a PRS that will include estimates of OM&R costs for the DCP for the next fiscal year. The PRS determines if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the PRP power function. Repayment criteria are based on law, policies including DOE Order RA 6120.2, and authorizing legislation.

Western calculates the annual installment based on 2 years of data. The calculation includes the projected costs of the rate installment year (future fiscal year) and an adjustment from the last historic fiscal year. The adjustment is the surplus or deficit that occurs in the last historic year when actual costs and repayment obligations are subtracted from actual revenues. This surplus or deficit is combined with the projected rate installment year costs to arrive at the rate installment. Each annual installment pays the annual amortized portion of the United States investment in the Deer Creek Dam and Reservoir hydroelectric facilities with interest and the associated OM&R. This repayment schedule does not depend upon the power and energy made available for sale or the rate of generation each year.

Certification of Rates

Western's Administrator certified that the interim rates for PRP power are the lowest possible rates consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

Statement of Revenue and Related Expenses

The revenue requirements for the PRP are based on PRS calculations for future requirements, which will be adjusted when FY actuals are known. The following table summarizes revenues and expenses for the current 6-year rate formula and the actual revenues and expenses for the same period.

PROVO RIVER COMPARISON OF 6-YEAR REVENUES AND EXPENSES FY 1999–2004

[$1,000]

Item	Actual [1]	Projected [2]	Difference
Total Revenues	$1,857	$1,424	$433
Revenues Distribution:			
O&M	1,217	1,046	171
Transmission	179	179	0
Interest	165	153	12
Investment Repayment	264	46	218
Surplus Revenues	32	0	32
Total Revenues Distribution	1,857	1,424	433

[1] Amounts for FY 2004 are estimates taken from FY 2003 final PRS.
[2] Taken from FY 1998 final PRS.

The following table provides a summary of the projected revenues and expenses during the provisional rate formula period.

PROVO RIVER PROJECT 6-YEAR PROJECTIONS REVENUES AND EXPENSES

[$1,000][1]

	FY 2005–2010 projections
Total Revenues [2]	$1,785
Costs:	
O&M	1,606
Interest	133
Investment Repayment	46
Total Costs	1,785

[1] Does not include $29,788 per year for transmission expense.
[2] Although the rate process seeks approval for a 5-year period (FY 2006–2010), 6 years of data are shown in the above table because FY 2005 is an estimate.

Basis for Rate Development

Each Customer is billed for electric service calculated every FY, payable in 12 equal monthly payments. Every FY, Western will estimate PRP expenses by preparing a PRS which will include estimates of OM&R costs for the DCP. The amount of each monthly payment will be established in advance by Western and submitted to the Customers on or before August 31 of the year preceding the appropriate FY.

The calculation of the amount of the annual installment and the monthly payments will include adjustments to the OM&R charges. These adjustments deal with the difference between estimated and actual OM&R expenses. If OM&R charges are underestimated, an amount equal to the difference must be added to the next annual installment. Conversely, if OM&R charges are overestimated, the amount would be deducted from the next installment.

In accordance with the Contracts, minor replacements and additions are included in the annual operation and maintenance expenses of the DCP. If major replacements and additions exceeding $5,000, but not greater than $25,000, are needed, the Customers will be given the option of financing their share of the cost or having the cost capitalized and amortized over the life of the replacement or addition, or over the life of the contract. If the Customers select the latter, the costs will be capitalized at the current interest rate prescribed by DOE, under RA 6120.2, Paragraph 11B, ''Basic Policy for Rate Adjustment; Interest Rate Formula,'' in the fiscal year in which the replacement or addition is made. Such costs will be based on prudent and businesslike management practices and following established electric industry operation and maintenance practices. If extraordinary replacements exceeding $25,000 are needed, the Customers will consult with Reclamation, PRWUA, and Western on financing the replacement.

The rate does not depend upon the power and energy made available for sale; instead, the Customers will pay the total PRP's annual powerplant expenses in return for the total marketable PRP production. Each Customer will pay its proportional share of the OM&R expenses identified in the PRS in 12 monthly installments.

Availability of Information

Information about this rate formula extension is available for public review at the Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, Utah 84111. Documents are also available at *http://www.wapa.gov/crsp/rateanal.htm* under CRSP rate adjustment documents for the Provo River Project's section.

Regulatory Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR 1500–1508); and DOE NEPA Regulations (10 CFR 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Submission to Federal Energy Regulatory Commission

The interim rate formula extension herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to the Commission for confirmation and final approval.

Order

In view of the above and under the authority delegated to me as the Deputy Secretary of Energy, I confirm and approve on an interim basis, effective April 1, 2005, an extension of the rate formula for the Provo River Project of the Western Area Power Administration. The rate formula shall remain in effect on an interim basis, pending the Commission's confirmation and approval of it or a substitute rate on a final basis through March 31, 2010.

Dated: November 22, 2004.

Kyle E. McSlarrow,
Deputy Secretary.

[FR Doc. 04–26714 Filed 12–3–04; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7843–6]

Interagency Project To Clean Up Open Dumps on Tribal Lands: Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Tribal Solid Waste Interagency Workgroup (Workgroup) is soliciting proposals for its seventh year of the Tribal Open Dump Cleanup Project (Cleanup Project). Since FY99, the Workgroup has funded approximately $13.4 million in projects. In FY04, the Interagency Workgroup made approximately $2.5 million available to fully or partially fund 24 selected projects. A similar amount of funding is projected for FY05. The Cleanup Project is part of a federal effort to help tribes comprehensively address their solid waste needs. The purpose of the Cleanup Project is to assist with closing or upgrading tribal high-threat waste disposal sites and providing alternative disposal and integrated solid waste management.

The Workgroup was established in April 1998 to coordinate federal assistance to tribes in bringing their waste disposal sites into compliance with the municipal solid waste landfill criteria (40 CFR part 258). Current Workgroup members include representatives from the U.S. Environmental Protection Agency (EPA); the Bureau of Indian Affairs (BIA); the Indian Health Service (IHS); and the Departments of Agriculture and Defense. EPA has issued docket number RCRA–2004–0018 for this Notice.

Criteria: Eligible recipients of assistance under the Open Dump Cleanup Project include federally recognized tribes and intertribal consortiums. A full explanation of the submittal process, the qualifying requirements, and the criteria that will be used to evaluate proposals for this project may be found in the Request for Proposals package.

DATES: For consideration, proposals must be received by close of business on January 31, 2005. Proposals postmarked on or before but not received by the closing date will not be considered. Please do not rely solely on overnight mail to meet the deadlines.

FOR FURTHER INFORMATION: Copies of the Request for Proposals package may be downloaded from the Internet at *http://www.epa.gov/tribalmsw* by clicking on the ''Grants/Funding'' link. Copies may also be obtained by contacting EPA, IHS or BIA regional or area offices or one of the following Workgroup representatives:

EPA—Christopher Dege, 703–308–2392 or Charles Bearfighter Reddoor 703–308–8245.
IHS—Steve Aoyama, 301–443–1046.
BIA—Debbie McBride, 202–208–3606.

Dated: November 15, 2004.

Matt Hale,

Director, Office of Solid Waste.

[FR Doc. 04–26732 Filed 12–3–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0121; FRL–7686–1]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on December 13-15, 2004, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Acetone; acrolein; biphenyl; butadiene; chloroacetaldehyde; chloroform; dimethylamine; epichlorohydrin; ethyl mercaptan; hexafluoroacetone; methyl chlorosilane; methyl dichlorosilane; methylene chloride; N,N,-dimethylformamide; nitric oxide; nitrogen dioxide; nitrogen mustards; peracetic acid; perchloromethyl mercaptan; propionaldehyde; tetrachloroethylene; trichloroethylene; vinyl acetate monomer.

DATES: A meeting of the NAC/AEGL Committee will be held from 10:00 a.m. to 5:30 p.m. on December 13, 2004; 8:30 a.m. to 5:30 p.m. on December 14, 2004 and from 8:00 a.m. to noon on December 15, 2004.

ADDRESSES: The meeting will be held at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Room numbers C5515 1A and 1B.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Economics, Exposure, and Technology Division (7403M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0121. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution

Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for March or April, 2005.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: December 1, 2004.

Wendy C. Hamnett

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 04–26814 Filed 12–2–04; 1:28 pm]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 9, 2004, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- November 18, 2004 (Open).

B. Reports

- Farm Credit System Building Association Quarterly Report.
- Corporate Report.
- FCS of America Termination Summary.

C. New Business—Regulations

- Governance—Proposed Rule.

Closed Session*

- OSMO Quarterly Report.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: December 2, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–26807 Filed 12–2–04; 11:04 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, December 7, 2004, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's corporate and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: November 30, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–3463 Filed 12–3–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, December 7, 2004, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: **Federal Register** Notice Seeking Public Comments—Shared National Credit (SNC) Data Collection Modernization.

Memorandum and resolution re: Final Rule—12 CFR part 364: Proper Disposal of Consumer Information under the Fair and Accurate Credit Transactions Act of 2003.

Memorandum and resolution re:

Proposed 2005 Corporate Operating Budget.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: November 30, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–3464 Filed 12–3–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1207]

Bank Holding Company Rating System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Federal Reserve has revised its bank holding company (BHC) rating system to better reflect and communicate its supervisory priorities and practices. The revised BHC rating system emphasizes risk management; implements a comprehensive and adaptable framework for analyzing and rating financial factors; and provides a framework for assessing and rating the potential impact of the nondepository entities of a holding company on the subsidiary depository institution(s).

DATES: The revised rating system will be applied to all BHC inspections beginning on or after January 1, 2005, as well as to inspections opened in 2004 and closed in 2005, at the discretion of the Reserve Bank.

FOR FURTHER INFORMATION CONTACT: Deborah Bailey, Associate Director, (202–452–2634), Barbara Bouchard, Deputy Associate Director, (202–452–3072), Molly Mahar, Senior Supervisory Financial Analyst, (202–452–2568), or Anna Lee Hewko, Supervisory Financial Analyst, (202–530–6260). For users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 2004, the Federal Reserve published a notice in the **Federal Register** (69 FR 43996) requesting comment on proposed revisions to the BHC rating system. The BHC rating system is an internal rating system used by the Federal Reserve as a management information and supervisory tool that defines the condition of all BHCs, including financial holding companies (FHCs), in a systematic way. First and foremost, a BHC's rating provides a summary evaluation of the BHC's condition for use by the supervisory community. Second, the BHC rating forms the basis of supervisory responses and actions. Third, the BHC rating provides the basis for supervisors' discussion of the firm's condition with BHC management. Fourth, the BHC rating determines whether the BHC is entitled to expedited applications processing and to certain regulatory exemptions.

The former BHC rating system, implemented in 1979 and commonly referred to as the BOPEC rating system, focused on the financial condition of discrete legal entities, consolidated capital, and consolidated earnings. It also included composite financial condition and management ratings. Since that time, a number of changes have occurred in the financial services industry, prompting a shift in supervisory policies and procedures away from historical analyses of financial condition, toward more forward looking assessments of risk management and financial factors. In order to address this shift, the Federal Reserve introduced a risk management rating for all bank holding companies in the mid-1990s. Although this adjustment proved an effective tool for assessing risk management, it was not the central focus of the rating system. Moreover, as the banking industry has continued to evolve over the past decade, the focus of the Federal Reserve's examination program for bank holding companies has increasingly centered on a comprehensive review of financial risk and the adequacy of risk management. As a result, in order to more fully align the rating process for BHCs with current supervisory practices, the Federal Reserve is revising the BHC rating system to emphasize risk management; introduce a comprehensive and adaptable framework for analyzing and rating financial factors; and provide a framework for assessing and rating the potential impact of the nondepository entities of a holding company on the subsidiary depository institution(s).

Summary of the Revised Rating System

Each BHC is assigned a composite rating (C) based on an evaluation and rating of its managerial and financial condition and an assessment of future potential risk to its subsidiary depository institution(s). The main components of the rating system represent: Risk Management (R); Financial Condition (F); and potential Impact (I) of the parent company and nondepository subsidiaries (collectively nondepository entities) on the subsidiary depository institutions. While the Federal Reserve expects all bank holding companies to act as a source of strength to their subsidiary depository institutions, the Impact rating focuses on downside risk—that is, on the likelihood of significant negative impact by the nondepository entities on the subsidiary depository institution. A fourth component rating, Depository Institution (D), will generally mirror the primary regulator's assessment of the subsidiary depository institutions. Thus, the primary component and composite ratings are displayed:

RFI/C (D)

In order to provide a consistent framework for assessing risk management, the R component is supported by four subcomponents that reflect the effectiveness of the banking organization's risk management and controls. The subcomponents are: Board and Senior Management Oversight; Policies, Procedures, and Limits; Risk Monitoring and Management Information Systems; and Internal Controls. The F component is similarly supported by four subcomponents reflecting an assessment of the quality of the banking organization's Capital; Asset Quality; Earnings; and Liquidity. A simplified version of the rating system that requires only the assignment of the risk management component rating and composite rating will be applied to noncomplex bank holding companies with assets at or below $1 billion.

Composite, component, and subcomponent ratings are assigned based on a 1 to 5 numeric scale. A 1 numeric rating indicates the highest rating, strongest performance and practices, and least degree of supervisory concern, whereas a 5 numeric rating indicates the lowest rating, weakest performance, and the highest degree of supervisory concern.

The Federal Reserve recognizes the interrelationship between the risk management and financial performance components of the revised rating system, an interrelationship that is

inherent in all supervisory rating systems. As such, examiners are expected to consider that a risk management factor may have a bearing on the assessment of a financial subcomponent or component rating and vice versa. In general, however, the risk management component and subcomponents should be viewed as the forward-looking component of the rating system and the financial condition component and subcomponents should be viewed as the current component of the rating system. For example, a BHC's ability to monitor and manage market risk (or sensitivity to market risk) should be evaluated together with the organization's ability to monitor and manage all risks under the R component of the rating system. However, poor market risk management may also be reflected in the F component if it impacts earnings or capital.

Comments Received and Changes Made

The Federal Reserve received a total of 13 comments regarding the proposed revisions to the BHC rating system. The comments came from banking organizations, trade associations, several Reserve Banks and one law firm. Commenters generally supported changes to the rating system, stating that the move to a more forward-looking assessment of risk management systems and the condition of the consolidated organization is appropriate.

Many commenters recommended that the rating scale for the subcomponents under the risk management rating be changed from a three point qualitative scale to a five point numeric rating scale in order to provide more granularity and consistency with the rest of the rating system. In response, the Federal Reserve has changed the rating scale for the risk management subcomponent ratings to a five point numeric rating scale.

Several commenters raised concerns that the new rating system is signaling a move by the Federal Reserve to lessen its reliance on the work of primary bank regulators and other functional nonbank regulators in its supervision of BHCs. The revised BHC rating system was developed to align the BHC rating process with the Federal Reserve's current supervisory practices in carrying out consolidated or umbrella supervision of BHCs. As such, the revised rating system and the accompanying implementation guidance is not intended to signal a shift in the Federal Reserve's supervisory practices of coordinating with and relying to the greatest extent possible on the work of primary bank and other functional nonbank regulators. This intent is clearly stated in the final policy.

Commenters also raised concerns about the ability of the Federal Reserve to apply the new rating system in a consistent manner due to the large number of subcomponent ratings in the new system and the inherent subjectivity in the rating process. As is the case with all supervisory rating systems, there is some subjectivity inherent in the revised BHC rating system; however, the Federal Reserve has made and will continue to make every effort to provide appropriate examiner guidance and training around the revised BHC rating system to ensure that the system is applied in a consistent manner. In addition, the Federal Reserve notes that the subcomponents under the R rating are based on the same guidance that has been used to rate risk management since 1995 and are therefore familiar to examination staff. Examination staff also is very familiar with assigning capital, asset quality, earnings, and liquidity ratings, as these components are important elements of our existing rating systems. The Federal Reserve believes that the subcomponents will increase consistency and transparency in the rating process by providing a clearer basis for the component ratings.

Commenters raised concerns about the possibility of one factor being weighted too heavily in the composite rating due to overlap between the component ratings and because the proposal stated that the composite rating may not be the numerical average of the component ratings. There is an interrelationship among the component ratings in the revised BHC rating system that is inherent in all supervisory rating systems. Federal Reserve examiners will consider that a risk management factor may have a bearing on the assessment of a financial subcomponent or component rating and vice versa, and weight that factor proportionately in the overall composite rating. Consistent with current rating practices for the BOPEC and CAMELS rating systems, some components may be given more weight than others in determining the composite rating, depending on the importance of that component in the overall condition of the BHC. In general, assignment of a composite rating may incorporate any factor that bears significantly on the overall condition and soundness of the BHC. Therefore, the composite rating is not derived by computing the arithmetic average of the component ratings. Nevertheless, the composite rating generally bears a close relationship to the component ratings assigned.

Commenters also raised questions about whether the Federal Reserve intends to impose *de facto* capital requirements on nondepository subsidiaries, whether the language in the proposal around the use of market indicators is signaling more extensive use of these references in the rating process, and whether the Federal Reserve intends to run the BOPEC rating system in conjunction with the revised BHC rating system for some time period of time. The Federal Reserve has clarified in the final policy that, consistent with current practice, the revised BHC rating system assesses the consolidated capital adequacy of the organization and is not intended to impose de facto capital requirements on nondepository subsidiaries. In addition, the Federal Reserve has clarified and simplified the language around the use of market indicators in the revised rating system to indicate that, consistent with current practice, examination staff should use these indicators as a source of information complementary to the examination process. Also, the Federal Reserve is implementing a quality assurance program around the new rating system during the first year of implementation that includes a mechanism to collect feedback from examination staff to address any significant implementation issues and to discuss difficult rating decisions to ensure consistent application of the revised rating system.

Finally, a few commenters suggested that BHC understanding of the revised rating system would be enhanced if the Federal Reserve were to utilize a temporary dual implementation period during which the BOPEC rating system and the revised rating system would be applied simultaneously and a BHC's BOPEC rating would prevail. The Federal Reserve has determined that a direct and prompt adoption of the revised rating system is preferable because the revised rating system better reflects current supervisory practices and because use of a single rating system would minimize regulatory burden on both examination staff and institutions. To ensure that BHCs understand the revised rating system, examination staff will be prepared to discuss the differences and similarities between the revised rating system and the BOPEC system with senior BHC officials during the first inspection cycle under the revised rating system. Moreover, during the first inspection cycle under the revised rating system, in situations in which a BHC has received a ratings downgrade, examiners will be prepared to discuss with senior BHC

officials the new ratings and how they compare with the BOPEC ratings for that institution.

Disclosure

The numeric ratings for bank holding companies under the revised BHC rating system will be disclosed to the bank holding company for its confidential use, in accordance with current disclosure practices. Under no circumstances should the bank holding company or any of its directors, officers, or employees disclose or make public any of the ratings.

Implementation

The revised BHC rating system becomes effective January 1, 2005, and is to be used for all BHC inspections commencing after that date. Inspections opened in 2004 and closed in 2005 may assign either the BOPEC rating or the RFI/C(D) rating. Although the timing of implementation is relatively close to the December release of the final rating system, supervision and examination staff at all twelve Reserve Banks and the Board of Governors have had and will continue to receive appropriate training in the revised rating system. Moreover, the revised rating system was developed and reviewed over a number of years with participation from a wide range of Federal Reserve System supervision and examination staff. Because the revised BHC rating system incorporates factors that have been routinely considered by examiners for years in evaluating a BHC's condition, the revised rating system should not have a significant effect on the conduct of inspections or on the regulatory burden of supervised institutions.

Text of the Bank Holding Company Rating System

Bank Holding Company Rating System

The bank holding company (BHC) rating system provides an assessment of certain risk management and financial condition factors that are common to all BHCs, as well as an assessment of the potential impact of the parent BHC and its nondepository subsidiaries (collectively nondepository entities) on the BHC's subsidiary depository institutions. Under this system, the Federal Reserve endeavors to ensure that all BHCs, including financial holding companies (FHCs), are evaluated in a comprehensive and uniform manner, and that supervisory attention is appropriately focused on the BHCs that exhibit financial and operational weaknesses or adverse trends. The rating system serves as a useful vehicle for identifying problem or deteriorating BHCs, as well as for categorizing BHCs with deficiencies in particular areas. Further, the rating system assists the Federal Reserve in following safety and soundness trends and in assessing the aggregate strength and soundness of the financial industry.

Each BHC [1] is assigned a composite rating (C) based on an overall evaluation and rating of its managerial and financial condition and an assessment of future potential risk to its subsidiary depository institution(s). The main components of the rating system represent: Risk Management [2] (R); Financial Condition (F); and Impact (I) of the nondepository entities on the subsidiary depository institutions. While the Federal Reserve expects all bank holding companies to act as a source of strength to their subsidiary depository institutions, the Impact rating focuses on downside risk—that is, on the likelihood of significant negative impact by the nondepository entities on the subsidiary depository institution(s). A fourth rating, Depository Institution(s) (D), will generally mirror the primary regulator's assessment of the subsidiary depository institution(s). Thus, the primary component and composite ratings are displayed:

RFI/C (D)

In order to provide a consistent framework for assessing risk management, the R component is supported by four subcomponents that reflect the effectiveness of the banking organization's risk management and controls. The subcomponents are: Board and Senior Management Oversight; Policies, Procedures, and Limits; Risk Monitoring and Management Information Systems; and Internal Controls. The F component is also supported by four subcomponents reflecting an assessment of the quality of the consolidated banking organization's Capital; Asset Quality; Earnings; and Liquidity.

Composite, component, and subcomponent ratings are assigned based on a 1 to 5 numeric scale. A 1 numeric rating indicates the highest rating, strongest performance and practices, and least degree of supervisory concern, whereas a 5 numeric rating indicates the lowest rating, weakest performance, and the highest degree of supervisory concern.

The following three sections contain detailed descriptions of the composite, component, and subcomponent ratings, implementation guidance by BHC type, and definitions of the ratings.

I. Description of the Rating System Elements

The Composite (C) Rating

C is the overall composite assessment of the BHC as reflected by consolidated risk management, consolidated financial strength, and the potential impact of the nondepository entities on the subsidiary depository institutions. The composite rating encompasses both a forward-looking and static assessment of the consolidated organization, as well as an assessment of the relationship between the depository and nondepository entities. Consistent with current Federal Reserve practice, the C rating is not derived as a simple numeric average of the R, F, and I components; rather, it reflects examiner judgment with respect to the relative importance of each component to the safe and sound operation of the BHC.

The Risk Management (R) Component

R represents an evaluation of the ability of the BHC's board of directors and senior management, as appropriate for their respective positions, to identify, measure, monitor, and control risk. The R rating underscores the importance of the control environment, taking into consideration the complexity of the organization and the risk inherent in its activities.

The R rating is supported by four subcomponents that are each assigned a separate rating. The four subcomponents are as follows: (1) Board and Senior Management Oversight; (2) Policies, Procedures and Limits; (3) Risk Monitoring and Management Information Systems; and (4) Internal Controls.[3] The subcomponents are evaluated in the context of the risks undertaken by and inherent in a banking organization and the overall level of complexity of the firm's operations. They provide the Federal Reserve System with a consistent framework for evaluating risk management and the control environment. Moreover, the subcomponents provide a clear structure and basis for discussion of the R rating with BHC management, reflect the principles of SR Letter 95–51, are

[1] A simplified version of the rating system that includes only the R and C components will be applied to noncomplex bank holding companies with assets at or below $1 billion.

[2] This risk management rating replaces the risk management rating required for BHCs by SR 95–51.

[3] Another subcomponent assessing the adequacy of disclosures relating to risk exposures, risk assessment, and capital adequacy for BHCs using the advanced internal ratings based approach to risk-based capital may be added once the Basel II framework has been implemented in the United States. The Federal Reserve does not intend to adopt such a disclosure rating without going out for public comment.

familiar to examiners, and parallel the existing risk assessment process.

Risk Management Subcomponents [4]

Board and Senior Management Oversight [5]

This subcomponent evaluates the adequacy and effectiveness of board and senior management's understanding and management of risk inherent in the BHC's activities, as well as the general capabilities of management. It also includes consideration of management's ability to identify, understand, and control the risks undertaken by the institution, to hire competent staff, and to respond to changes in the institution's risk profile or innovations in the banking sector.

Policies, Procedures and Limits

This subcomponent evaluates the adequacy of a BHC's policies, procedures, and limits given the risks inherent in the activities of the consolidated BHC and the organization's stated goals and objectives. This analysis will include consideration of the adequacy of the institution's accounting and risk disclosure policies and procedures.

Risk Monitoring and Management Information Systems

This subcomponent assesses the adequacy of a BHC's risk measurement and monitoring, and the adequacy of its management reports and information systems. This analysis will include a review of the assumptions, data, and procedures used to measure risk and the consistency of these tools with the level of complexity of the organization's activities.

Internal Controls

This subcomponent evaluates the adequacy of a BHC's internal controls and internal audit procedures, including the accuracy of financial reporting and disclosure and the strength and influence, within the organization, of the internal audit team. This analysis will also include a review of the independence of control areas from management and the consistency of the scope coverage of the internal audit team with the complexity of the organization.

The Financial Condition (F) Component

F represents an evaluation of the consolidated organization's financial strength. The F rating focuses on the ability of the BHC's resources to support the level of risk associated with its activities. The F rating is supported by four subcomponents: capital (C), asset quality (A), earnings (E), and liquidity (L). The CAEL subcomponents can be evaluated along individual business lines, product lines, or on a legal entity basis, depending on what is most appropriate given the structure of the organization. The assessment of the CAEL components should utilize benchmarks and metrics appropriate to the business activity being evaluated.

Consistent with current supervisory practices, examination staff should continue to review relevant market indicators, such as external debt ratings, credit spreads, debt and equity prices, and qualitative rating agency assessments as a source of information complementary to examination findings.

Financial Condition Subcomponents (CAEL)

Capital Adequacy

C reflects the adequacy of an organization's consolidated capital position, from a regulatory capital perspective and an economic capital perspective, as appropriate to the BHC.[6] The evaluation of capital adequacy should consider the risk inherent in an organization's activities and the ability of capital to absorb unanticipated losses, to provide a base for growth, and to support the level and composition of the parent company and subsidiaries' debt.

Asset Quality

A reflects the quality of an organization's consolidated assets. The evaluation should include, as appropriate, both on-balance sheet and off-balance sheet exposures, and the level of criticized and nonperforming assets. Forward-looking indicators of asset quality, such as the adequacy of underwriting standards, the level of concentration risk, the adequacy of credit administration policies and procedures, and the adequacy of management information systems for credit risk may also inform the Federal Reserve's view of asset quality.

Earnings

E reflects the quality of consolidated earnings. The evaluation considers the level, trend, and sources of earnings, as well as the ability of earnings to augment capital as necessary, to provide ongoing support for a BHC's activities.

Liquidity

L reflects the consolidated organization's ability to attract and maintain the sources of funds necessary to support its operations and meet its obligations. The funding conditions for each of the material legal entities in the holding company structure should be evaluated to determine if any weaknesses exist that could affect the funding profile of the consolidated organization.

The Impact (I) Component

Like the other components and subcomponents, the I component is rated on a five point numerical scale. However, the descriptive definitions of the numerical ratings for I are different than those of the other components and subcomponents. The I ratings are defined as follows:

1—Low likelihood of significant negative impact;

2—Limited likelihood of significant negative impact;

3—Moderate likelihood of significant negative impact;

4—Considerable likelihood of significant negative impact; and

5—High likelihood of significant negative impact.

The I component is an assessment of the potential impact of the nondepository entities on the subsidiary depository institution(s). The I assessment will evaluate both the risk management practices and financial condition of the nondepository entities—an analysis that will borrow heavily from the analysis conducted for the R and F components. Consistent with current practices, nondepository entities will be evaluated using benchmarks and analysis appropriate for those businesses. In addition, for functionally regulated nondepository subsidiaries, examination staff will continue to rely, to the extent possible, on the work of those functional regulators to assess the risk management practices and financial condition of those entities. In rating the I component, examination staff is required to evaluate the degree to which current or potential issues within the nondepository entities present a threat to the safety and soundness of the subsidiary depository institution(s). In this regard, the I component will give a clearer indication of the degree of risk posed by the nondepository entities to the federal safety net than does the current rating system.

The I component focuses on the aggregate impact of the nondepository entities on the subsidiary depository institution(s). In this regard, the I rating

[4] SR Letter 95–51 contains a detailed description of the four risk management subcomponents.

[5] The Board of Directors is considered separate from Management.

[6] Of course, the regulatory minimum capital ratios for BHCs are eight percent total risk-based capital, four percent tier 1 risk-based capital, three percent tier 1 leverage for BHCs rated strong, and four percent tier 1 leverage for all other BHCs. See 12 CFR 225, Appendices A and D.

does not include individual subcomponent ratings for the parent company and nondepository subsidiaries. An I rating is always assigned for each BHC; however, as is currently the case, nonmaterial nondepository subsidiaries[7] may be excluded from the I analysis at examiner discretion. Any risk management and financial issues at the nondepository entities that potentially impact the safety and soundness of the subsidiary depository institution(s) should be identified in the written comments under the I rating. This approach is consistent with the Federal Reserve's objective not to extend bank-like supervision to nondepository entities.

The analysis of the parent company for the purpose of assigning an I rating should emphasize weaknesses that could directly impact the risk management or financial condition of the subsidiary depository institution(s). Similarly, the analysis of the nondepository subsidiaries for the purpose of assigning an I rating should emphasize weaknesses that could negatively impact the parent company's relationship with its subsidiary depository institution(s) and weaknesses that could have a direct impact on the risk management practices or financial condition of the subsidiary depository institution(s). The analysis under the I component should consider existing as well as potential issues and risks that may impact the subsidiary depository institution(s) now or in the future. Particular attention should be paid to the following risk management and financial factors in assigning the I rating:

Risk Management Factors

- *Strategic Considerations:* The potential risks posed to the subsidiary depository institution(s) by the nondepository entities' strategic plans for growth in existing activities and expansion into new products and services;
- *Operational Considerations:* The spillover impact on the subsidiary depository institution(s) from actual losses, a poor control environment, or an operational loss history in the nondepository entities;
- *Legal and Reputational Considerations:* The spillover effect on the subsidiary depository institution(s) of complaints and litigation that name one or more of the nondepository entities as defendants, or violations of laws or regulations, especially pertaining to intercompany transactions where the subsidiary depository institution(s) is involved; and
- *Concentration Considerations:* The potential risks posed to the subsidiary depository institution(s) by concentrations within the nondepository entities in business lines, geographic areas, industries, customers, or other factors.

Financial Factors

- *Capital Distribution:* The distribution and transferability of capital across the legal entities;
- *Intra-Group Exposures:* The extent to which intra-group exposures, including servicing agreements, have the potential to undermine the condition of subsidiary depository institution(s); and,
- *Parent Company Cash Flow and Leverage:* The extent to which the parent company is dependent on dividend payments, from both the nondepository subsidiaries and the subsidiary depository institution(s), to service debt and cover fixed charges. Also, the effect that these upstreamed cash flows have had, or can be expected to have, on the financial condition of the BHC's nondepository subsidiaries and subsidiary depository institution(s).

The Depository Institutions (D) Component

The (D) component will generally reflect the composite CAMELS rating assigned by the subsidiary depository institution's primary supervisor. In a multi-bank BHC, the (D) rating will reflect a weighted average of the CAMELS composite ratings of the individual subsidiary depository institutions, weighted by both asset size and the relative importance of each depository institution within the holding company structure. In this regard, the CAMELS composite rating for a subsidiary depository institution that dominates the corporate culture may figure more prominently in the assignment of the (D) rating than would be dictated by asset size, particularly when problems exist within that depository institution.

The (D) component conveys important supervisory information, reflecting the primary supervisor's assessment of the legal entity. The (D) component stands outside of the composite rating although significant risk management and financial condition considerations at the depository institution level are incorporated in the consolidated R and F ratings, which are then factored into the C rating.

Consistent with current practice, if, in the process of analyzing the financial condition and risk management programs of the consolidated organization, a major difference of opinion regarding the safety and soundness of the subsidiary depository institution(s) emerges between the Federal Reserve and the depository institution's primary regulator, then the (D) rating should reflect the Federal Reserve's evaluation.

To highlight the presence of one or more problem depository institution(s) in a multi-bank BHC whose depository institution component, based on weighted averages, might not otherwise reveal their presence (*i.e.*, depository institution ratings of 1, 2 or 3), a problem modifier, ''P'' would be attached to the depository institution rating (*e.g.*, 1P, 2P, or 3P). Thus, 2P would indicate that, while on balance the depository subsidiaries are rated satisfactory, there exists a problem depository institution (composite 4 or 5) among the subsidiary depository institutions. The problem identifier is unnecessary when the depository institution component is rated 4 or 5.

II. Implementation of the BHC Rating System by Bank Holding Company Type

The Federal Reserve revised the BHC rating system to align the rating system with current Federal Reserve supervisory practices. The rating system will require analysis and support similar to that required by the former BOPEC rating system for BHCs of all sizes.[8] As such, the level of analysis and support will vary based upon whether a BHC has been determined to be ''complex'' or ''noncomplex.''[9] In addition, the resources dedicated to the inspection of each BHC will continue to

[7] As a general rule, nondepository subsidiaries should be included in the I analysis whenever their assets exceed five percent of the BHC's consolidated capital or $10 million, whichever is lower.

[8] As described in the BHC inspection manual, SR 95–51, SR 97–24, SR 99–15, and SR 02–01.

[9] The determination of whether a holding company is ''complex'' versus ''noncomplex'' is made at least annually on a case-by-case basis taking into account and weighing a number of considerations, such as: The size and structure of the holding company; the extent of intercompany transactions between depository institution subsidiaries and the holding company or nondepository subsidiaries of the holding company; the nature and scale of any nondepository activities, including whether the activities are subject to review by another regulator and the extent to which the holding company is conducting Gramm-Leach-Bliley authorized activities (e.g., insurance, securities, merchant banking); whether risk management processes for the holding company are consolidated; and whether the holding company has material debt outstanding to the public. Size is a less important determinant of complexity than many of the factors noted above, but generally companies of significant size (e.g., assets of $10 billion on balance sheet or managed) would be considered complex, irrespective of the other considerations.

be determined by the risk posed by the subsidiary depository institution(s) to the federal safety net [10] and the risk posed by the BHC to the subsidiary depository institution(s).

Noncomplex BHCs with Assets of $1 Billion or Less (Shell Holding Companies)

Rating: R and C

Consistent with SR 02–1, examination staff will assign only an R and C rating for all companies in the shell BHC program (noncomplex BHCs with assets under $1 billion). The R rating is the M rating from the subsidiary depository institution's CAMELS rating. To provide consistent rating terminology across BHCs of all sizes, the terminology is changed to R from the former M. The C rating is the subsidiary depository institution's composite CAMELS rating.

Noncomplex BHCs With Assets Greater Than $1 Billion

One-Bank Holding Company

Rating: RFI/C (D)

For all noncomplex, one-bank holding companies with assets of greater than $1 billion, examination staff will assign all component and subcomponent ratings; however, examination staff should continue to rely heavily on information and analysis contained in the primary regulator's report of examination for the subsidiary depository institution to assign the R and F ratings. If examination staff have reviewed the primary regulator's examination report and are comfortable with the analysis and conclusions contained in that report, then the BHC ratings should be supported with concise language that indicates that the conclusions are based on the analysis of the primary regulator. No additional analysis will be required.

Please note, however, in cases where the analysis and conclusions of the primary regulator are insufficient to assign the ratings, the primary regulator should be contacted to ascertain whether additional analysis and support may be available. Further, if discussions with the primary regulator do not provide sufficient information to assign the ratings, discussions with BHC management may be warranted to obtain adequate information to assign the ratings. In most cases, additional information or support obtained through these steps will be sufficient to permit the assignment of the R and F ratings. To the extent that additional analysis is deemed necessary, the level of analysis and resources spent on this assessment should be in line with the level of risk the subsidiary depository institution poses to the federal safety net. In addition, any activities that involve information gathering with respect to the subsidiary depository institution should be coordinated with and, if possible, conducted by, the primary regulator of that institution.

Examination staff are required to make an independent assessment in order to assign the I rating, which provides an evaluation of the impact of the BHC on the subsidiary depository institution. Analysis for the I rating in non-complex one-bank holding companies should place particular emphasis on issues related to parent company cash flow and compliance with sections 23A and 23B of the Federal Reserve Act.

Multi-Bank Holding Company

Rating: RFI/C (D)

For all noncomplex BHCs with assets of greater than $1 billion and more than one subsidiary depository institution, examination staff will assign all component and subcomponent ratings of the new system. Examiners should rely, to the extent possible, on the work conducted by the primary regulators of the subsidiary depository institutions to assign the R and F ratings. However, any risk management or other important functions conducted by the nondepository entities of the BHC, or conducted across legal entity lines, should be subject to review by Federal Reserve examination staff. These reviews should be conducted in coordination with the primary regulator(s). The assessment for the I rating requires an independent assessment by Federal Reserve examination staff.

Complex BHCs

Rating: RFI/C (D)

For complex BHCs, examination staff will assign all component and subcomponent ratings of the new rating system. The ratings analysis should be based on the primary and functional regulators' assessment of the subsidiary entities, as well as on the examiners' assessment of the consolidated organization as determined through off-site review and the BHC inspection process, as appropriate. The resources needed for the inspection and the level of support needed for developing a full rating will depend on the complexity of the organization, including structure and activities (*see* footnote 7), and should be commensurate with the level of risk posed by the subsidiary depository institution(s) to the federal safety net and the level of risk posed by the BHC to the subsidiary depository institution(s).

Nontraditional BHCs

Rating: RFI/C (D)

Examination staff are required to assign the full rating system for nontraditional BHCs. Nontraditional BHCs include BHCs in which most or all nondepository entities are regulated by a functional regulator and in which the subsidiary depository institution(s) are small in relation to the nondepository entities. The rating system is not intended to introduce significant additional work in the rating process for these organizations. As discussed above, the level of analysis conducted and resources needed to inspect the BHC and to assign the consolidated R and F ratings should be commensurate with the level of risk posed by the subsidiary depository institution(s) to the federal safety net and the level of risk posed by the BHC to the subsidiary depository institution(s). The report of examination by, and other information obtained from, the functional and primary bank regulators should provide the basis for the consolidated R and F ratings. On-site work, to the extent it involves areas that are the primary responsibility of the functional or primary bank regulator, should be coordinated with and, if possible, conducted by, those regulators. Examination staff should concentrate their independent analysis for the R and F ratings around activities and risk management conducted by the parent company and non-functionally regulated nondepository subsidiaries, as well as around activities and risk management functions that are related to the subsidiary depository institution(s), for example, audit functions for the depository institution(s) and compliance with sections 23A and 23B.

Examination staff are required to make an independent assessment of the impact of the nondepository entities on the subsidiary depository institution(s) in order to assign the I rating.

III. Rating Definitions for the RFI/C (D) Rating System

All component and subcomponent ratings are rated on a five point numeric scale. With the exception of the I component, ratings will be assigned in ascending order of supervisory concern as follows: 1—Strong; 2—Satisfactory; 3—Fair; 4—Marginal; and 5—Unsatisfactory.

[10] The federal safety net includes the federal deposit insurance fund, the payments system, and the Federal Reserve's discount window.

A description of the I component ratings is in the I section below.

As is current Federal Reserve practice, the component ratings are not derived as a simple numeric average of the subcomponent ratings; rather, weight afforded to each subcomponent in the overall component rating will depend on the severity of the condition of that subcomponent and the relative importance of that subcomponent to the consolidated organization. Similarly, some components may be given more weight than others in determining the composite rating, depending on the situation of the BHC. Assignment of a composite rating may incorporate any factor that bears significantly on the overall condition and soundness of the BHC, although generally the composite rating bears a close relationship to the component ratings assigned.

Composite Rating

Rating 1 (Strong). BHCs in this group are sound in almost every respect; any negative findings are basically of a minor nature and can be handled in a routine manner. Risk management practices and financial condition provide resistance to external economic and financial disturbances. Cash flow is more than adequate to service debt and other fixed obligations, and the nondepository entities pose little risk to the subsidiary depository institution(s).

Rating 2 (Satisfactory). BHCs in this group are fundamentally sound but may have modest weaknesses in risk management practices or financial condition. The weaknesses could develop into conditions of greater concern but are believed correctable in the normal course of business. As such, the supervisory response is limited. Cash flow is adequate to service obligations, and the nondepository entities are unlikely to have a significant negative impact on the subsidiary depository institution(s).

Rating 3 (Fair). BHCs in this group exhibit a combination of weaknesses in risk management practices and financial condition that range from fair to moderately severe. These companies are less resistant to the onset of adverse business conditions and would likely deteriorate if concerted action is not effective in correcting the areas of weakness. Consequently, these companies are vulnerable and require more than normal supervisory attention and financial surveillance. However, the risk management and financial capacity of the company, including the potential negative impact of the nondepository entities on the subsidiary depository institution(s), pose only a remote threat to its continued viability.

Rating 4 (Marginal). BHCs in this group have an immoderate volume of risk management and financial weaknesses, which may pose a heightened risk of significant negative impact on the subsidiary depository institution(s). The holding company's cash flow needs may be being met only by upstreaming imprudent dividends and/or fees from its subsidiaries. Unless prompt action is taken to correct these conditions, the organization's future viability could be impaired. These companies require close supervisory attention and substantially increased financial surveillance.

Rating 5 (Unsatisfactory). The critical volume and character of the risk management and financial weaknesses of BHCs in this category, and concerns about the nondepository entities negatively impacting the subsidiary depository institution(s), could lead to insolvency without urgent aid from shareholders or other sources. The imminent inability to prevent liquidity and/or capital depletion places the BHC's continued viability in serious doubt. These companies require immediate corrective action and constant supervisory attention.

Risk Management Component

Rating 1 (Strong). A rating of 1 indicates that management effectively identifies and controls all major types of risk posed by the BHC's activities. Management is fully prepared to address risks emanating from new products and changing market conditions. The board and management are forward-looking and active participants in managing risk. Management ensures that appropriate policies and limits exist and are understood, reviewed, and approved by the board. Policies and limits are supported by risk monitoring procedures, reports, and management information systems that provide management and the board with the information and analysis that is necessary to make timely and appropriate decisions in response to changing conditions. Risk management practices and the organization's infrastructure are flexible and highly responsive to changing industry practices and current regulatory guidance. Staff has sufficient experience, expertise and depth to manage the risks assumed by the institution.

Internal controls and audit procedures are sufficiently comprehensive and appropriate to the size and activities of the institution. There are few noted exceptions to the institution's established policies and procedures, and none is material. Management effectively and accurately monitors the condition of the institution consistent with the standards of safety and soundness, and in accordance with internal and supervisory policies and practices. Risk management processes are fully effective in identifying, monitoring, and controlling the risks to the institution.

Rating 2 (Satisfactory). A rating of 2 indicates that the institution's management of risk is largely effective, but lacking in some modest degree. Management demonstrates a responsiveness and ability to cope successfully with existing and foreseeable risks that may arise in carrying out the institution's business plan. While the institution may have some minor risk management weaknesses, these problems have been recognized and are in the process of being resolved. Overall, board and senior management oversight, policies and limits, risk monitoring procedures, reports, and management information systems are considered satisfactory and effective in maintaining a safe and sound institution. Risks are controlled in a manner that does not require more than normal supervisory attention.

The BHC's risk management practices and infrastructure are satisfactory and generally are adjusted appropriately in response to changing industry practices and current regulatory guidance. Staff experience, expertise and depth are generally appropriate to manage the risks assumed by the institution.

Internal controls may display modest weaknesses or deficiencies, but they are correctable in the normal course of business. The examiner may have recommendations for improvement, but the weaknesses noted should not have a significant effect on the safety and soundness of the institution.

Rating 3 (Fair). A rating of 3 signifies that risk management practices are lacking in some important ways and, therefore, are a cause for more than normal supervisory attention. One or more of the four elements of sound risk management[11] (active board and senior management oversight; adequate policies, procedures, and limits; adequate risk management monitoring and management information systems; comprehensive internal controls) is considered less than acceptable, and has precluded the institution from fully addressing one or more significant risks to its operations. Certain risk

[11] Framework for Risk-Focused Supervision of Large Complex Institutions, August 1997; SR Letter 95–51, Rating the Adequacy of Risk Management Processes and Internal Controls at State Member Banks and Bank Holding Companies.

management practices are in need of improvement to ensure that management and the board are able to identify, monitor, and control all significant risks to the institution. Also, the risk management structure may need to be improved in areas of significant business activity, or staff expertise may not be commensurate with the scope and complexity of business activities. In addition, management's response to changing industry practices and regulatory guidance may need to improve.

The internal control system may be lacking in some important aspects, particularly as indicated by continued control exceptions or by a failure to adhere to written policies and procedures. The risk management weaknesses could have adverse effects on the safety and soundness of the institution if corrective action is not taken by management.

Rating 4 (Marginal). A rating of 4 represents deficient risk management practices that fail to identify, monitor, and control significant risk exposures in many material respects. Generally, such a situation reflects a lack of adequate guidance and supervision by management and the board. One or more of the four elements of sound risk management is deficient and requires immediate and concerted corrective action by the board and management.

The institution may have serious identified weaknesses, such as an inadequate separation of duties, that require substantial improvement in internal control or accounting procedures, or improved adherence to supervisory standards or requirements. The risk management deficiencies warrant a high degree of supervisory attention because, unless properly addressed, they could seriously affect the safety and soundness of the institution.

Rating 5 (Unsatisfactory). A rating of 5 indicates a critical absence of effective risk management practices with respect to the identification, monitoring, or control over significant risk exposures. One or more of the four elements of sound risk management is considered wholly deficient, and management and the board have not demonstrated the capability to address these deficiencies.

Internal controls are critically weak and, as such, could seriously jeopardize the continued viability of the institution. If not already evident, there is an immediate concern as to the reliability of accounting records and regulatory reports and the potential for losses if corrective measures are not taken immediately. Deficiencies in the institution's risk management procedures and internal controls require immediate and close supervisory attention.

Risk Management Subcomponents

Board and Senior Management Oversight

Rating 1 (Strong). An assessment of Strong signifies that the board and senior management are forward-looking, fully understand the types of risk inherent in the BHC's activities, and actively participate in managing those risks. The board has approved overall business strategies and significant policies, and ensures that senior management is fully capable of managing the activities that the BHC conducts. Consistent with the standards of safety and soundness, oversight of risk management practices is strong and the organization's overall business strategy is effective.

Senior management ensures that risk management practices are rapidly adjusted in accordance with enhancements to industry practices and regulatory guidance, and exposure limits are adjusted as necessary to reflect the institution's changing risk profile. Policies, limits, and tracking reports are appropriate, understood, and regularly reviewed.

Management provides effective supervision of the day-to-day activities of all officers and employees, including the supervision of the senior officers and the heads of business lines. It hires staff that possess experience and expertise consistent with the scope and complexity of the organization's business activities. There is a sufficient depth of staff to ensure sound operations. Management ensures compliance with laws and regulations and that employees have the integrity, ethical values, and competence consistent with a prudent management philosophy and operating style.

Management responds appropriately to changes in the marketplace. It identifies all risks associated with new activities or products before they are launched, and ensures that the appropriate infrastructure and internal controls are established.

Rating 2 (Satisfactory). An assessment of Satisfactory indicates that board and senior management have an adequate understanding of the organization's risk profile and provide largely effective oversight of risk management practices. In this regard, the board has approved all major business strategies and significant policies, and ensures that senior management is capable of managing the activities that the BHC conducts. Oversight of risk management practices is satisfactory and the organization's overall business strategy is generally sound.

Senior management generally adjusts risk management practices appropriately in accordance with enhancements to industry practices and regulatory guidance, and adjusts exposure limits as necessary to reflect the institution's changing risk profile, although these practices may be lacking in some modest degree. Policies, limits, and tracking reports are generally appropriate, understood, and regularly reviewed, and the new product approval process adequately identifies the associated risks and necessary controls.

Senior management's day-to-day supervision of management and staff at all levels is generally effective. The level of staffing, and its experience, expertise, and depth, is sufficient to operate the business lines in a safe and sound manner. Minor weaknesses may exist in the staffing, infrastructure, and risk management processes for individual business lines or products, but these weaknesses have been identified by management, are correctable in the normal course of business, and are in the process of being addressed. Weaknesses noted should not have a significant effect on the safety and soundness of the institution.

Rating 3 (Fair). An assessment of Fair signifies that board and senior management oversight is lacking in some important way and, therefore, is a cause for more than normal supervisory attention. The weaknesses may involve a broad range of activities or be material to a major business line or activity. Weaknesses in one or more aspect of board and senior management oversight have precluded the institution from fully addressing one or more significant risks to the institution. The deficiencies may include a lack of knowledge with respect to the organization's risk profile, insufficient oversight of risk management practices, ineffective policies or limits, inadequate or under-utilized management reporting, an inability to respond to industry enhancements and changes in regulatory guidance, or failure to execute appropriate business strategies. Staffing may not be adequate or staff may not possess the experience and expertise needed for the scope and complexity of the organization's business activities. The day-to-day supervision of officer and staff activities, including the management of senior officers or heads of business lines, may be lacking. Certain risk management practices are in need of improvement to ensure that management and the board is able to

identify, monitor, and control all significant risks to the institution. Weaknesses noted could have adverse effects on the safety and soundness of the institution if corrective action is not taken by management.

Rating 4 (Marginal). An assessment of Marginal represents deficient oversight practices that reflect a lack of adequate guidance and supervision by management and the board. A number of significant risks to the institution have not been adequately addressed, and the board and senior management function warrants a high degree of supervisory attention. Multiple board and senior management weaknesses are in need of immediate improvement. They may include a significant lack of knowledge with respect to the organization's risk profile, largely insufficient oversight of risk management practices, ineffective policies or limits, inadequate or considerably under-utilized management reporting, an inability to respond to industry enhancements and changes in regulatory guidance, or failure to execute appropriate business strategies. Staffing may not be adequate or possess the experience and expertise needed for the scope and complexity of the organization's business activities, and the day-to-day supervision of officer and staff activities, including the management of senior officers or heads of business lines, may be considerably lacking. These conditions warrant a high degree of supervisory attention because, unless properly addressed, they could seriously affect the safety and soundness of the institution.

Rating 5 (Unsatisfactory). An assessment of Unsatisfactory indicates a critical absence of effective board and senior management oversight practices. Problems may include a severe lack of knowledge with respect to the organization's risk profile, insufficient oversight of risk management practices, wholly ineffective policies or limits, critically inadequate or under-utilized management reporting, a complete inability to respond to industry enhancements and changes in regulatory guidance, or failure to execute appropriate business strategies. Staffing may be inadequate, inexpert, and/or inadequately supervised. The deficiencies require immediate and close supervisory attention, as management and the board have not demonstrated the capability to address them. Weaknesses could seriously jeopardize the continued viability of the institution.

Policies, Procedures and Limits

Rating 1 (Strong). An assessment of Strong indicates that the policies, procedures, and limits provide for effective identification, measurement, monitoring, and control of the risks posed by all significant activities, including lending, investing, trading, trust, and fiduciary activities. Policies, procedures, and limits are consistent with the institution's goals and objectives and its overall financial strength. The policies clearly delineate accountability and lines of authority across the institution's activities. The policies also provide for the review of new activities to ensure that the infrastructure necessary to identify, monitor, and control the associated risks is in place before the activities are initiated.

Rating 2 (Satisfactory). An assessment of Satisfactory indicates that the policies, procedures and limits cover all major business areas, are thorough and substantially up-to-date, and provide a clear delineation of accountability and lines of authority across the institution's activities. Policies, procedures, and limits are generally consistent with the institution's goals and objectives and its overall financial strength. Also, the policies provide for adequate due diligence before engaging in new activities or products. Any deficiencies or gaps that have been identified are minor in nature and in the process of being addressed. Weaknesses should not have a significant effect on the safety and soundness of the institution.

Rating 3 (Fair). An assessment of Fair signifies that deficiencies exist in policies, procedures, and limits that require more than normal supervisory attention. The deficiencies may involve a broad range of activities or be material to a major business line or activity. The deficiencies may include policies, procedures, or limits (or the lack thereof) that do not adequately identify, measure, monitor, or control the risks posed by significant activities; are not consistent with the experience of staff, the organization's strategic goals and objectives, or the financial strength of the institution; or do not clearly delineate accountability or lines of authority. Also, the policies may not provide for adequate due diligence before engaging in new activities or products. Weaknesses noted could have adverse effects on the safety and soundness of the institution unless corrective action is taken by management.

Rating 4 (Marginal). An assessment of Marginal indicates deficient policies, procedures, and limits that do not address a number of significant risks to the institution. Multiple practices are in need of immediate improvement, which may include policies, procedures, or limits (or the lack thereof) that ineffectively identify, measure, monitor, or control the risks posed by significant activities; are not commensurate with the experience of staff, the institution's strategic goals and objectives, or the financial strength of the institution; or do not delineate accountability or lines of authority. Moreover, policies may be considerably lacking with regards to providing for effective due diligence before engaging in new activities or products. These conditions warrant a high degree of supervisory attention because, unless properly addressed, they could seriously affect the safety and soundness of the institution.

Rating 5 (Unsatisfactory). An assessment of Unsatisfactory indicates a critical absence of effective policies, procedures, and limits. Policies, procedures, or limits (or the lack thereof) are largely or entirely ineffective with regard to identifying, measuring, monitoring, or controlling the risks posed by significant activities; are completely inconsistent with the experience of staff, the organization's strategic goals and objectives, or the financial strength of the institution; or do not delineate accountability or lines of authority. Also, policies may be completely lacking with regard to providing for effective due diligence before engaging in new activities or products. Critical weaknesses could seriously jeopardize the continued viability of the institution and require immediate and close supervisory attention.

Risk Monitoring and MIS

Rating 1 (Strong). An assessment of Strong indicates that risk monitoring practices and MIS reports address all material risks. The key assumptions, data sources, and procedures used in measuring and monitoring risk are appropriate, thoroughly documented, and frequently tested for reliability. Reports and other forms of communication are consistent with activities, are structured to monitor exposures and compliance with established limits, goals, or objectives, and compare actual versus expected performance when appropriate. Management and board reports are accurate and timely and contain sufficient information to identify adverse trends and to thoroughly evaluate the level of risk faced by the institution.

Rating 2 (Satisfactory). An assessment of Satisfactory indicates that risk

monitoring practices and MIS reports cover major risks and business areas, although they may be lacking in some modest degree. In general, the reports contain valid assumptions that are periodically tested for accuracy and reliability and are adequately documented and distributed to the appropriate decision-makers. Reports and other forms of communication generally are consistent with activities; are structured to monitor exposures and compliance with established limits, goals, or objectives; and compare actual versus expected performance when appropriate. Management and board reports are generally accurate and timely, and broadly identify adverse trends and the level of risk faced by the institution. Any weaknesses or deficiencies that have been identified are in the process of being addressed.

Rating 3 (Fair). An assessment of Fair signifies that weaknesses exist in the institution's risk monitoring practices or MIS reports that require more than normal supervisory attention. The weaknesses may involve a broad range of activities or be material to a major business line or activity. They may contribute to ineffective risk identification or monitoring through inappropriate assumptions, incorrect data, poor documentation, or the lack of timely testing. In addition, MIS reports may not be distributed to the appropriate decision-makers, adequately monitor significant risks, or properly identify adverse trends and the level of risk faced by the institution. Weaknesses noted could have adverse effects on the safety and soundness of the institution if corrective action is not taken by management.

Rating 4 (Marginal). An assessment of Marginal represents deficient risk monitoring practices or MIS reports that, unless properly addressed, could seriously affect the safety and soundness of the institution. A number of significant risks to the institution are not adequately monitored or reported. Ineffective risk identification may result from notably inappropriate assumptions, incorrect data, poor documentation, or the lack of timely testing. In addition, MIS reports may not be distributed to the appropriate decision-makers, may inadequately monitor significant risks, or fail to identify adverse trends and the level of risk faced by the institution. The risk monitoring and MIS deficiencies warrant a high degree of supervisory attention because, unless properly addressed, they could seriously affect the safety and soundness of the institution.

Rating 5 (Unsatisfactory). An assessment of Unsatisfactory indicates a critical absence of risk monitoring and MIS. They are wholly deficient due to inappropriate assumptions, incorrect data, poor documentation, or the lack of timely testing. Moreover, MIS reports may not be distributed to the appropriate decision-makers, fail to monitor significant risks, or fail to identify adverse trends and the level of risk faced by the institution. These critical weaknesses require immediate and close supervisory attention, as they could seriously jeopardize the continued viability of the institution.

Internal Controls

Rating 1 (Strong). An assessment of Strong indicates that the system of internal controls is robust for the type and level of risks posed by the nature and scope of the organization's activities. The organizational structure establishes clear lines of authority and responsibility for monitoring adherence to policies, procedures, and limits, and wherever applicable, exceptions are noted and promptly investigated. Reporting lines provide clear independence of the control areas from the business lines and separation of duties throughout the organization. Robust procedures exist for ensuring compliance with applicable laws and regulations, including consumer laws and regulations. Financial, operational, and regulatory reports are reliable, accurate, and timely. Internal audit or other control review practices provide for independence and objectivity. Internal controls and information systems are thoroughly tested and reviewed; the coverage, procedures, findings, and responses to audits and review tests are well documented; identified material weaknesses are given thorough and timely high level attention; and management's actions to address material weaknesses are objectively reviewed and verified. The board or its audit committee regularly reviews the effectiveness of internal audits and other control review activities.

Rating 2 (Satisfactory). An assessment of Satisfactory indicates that the system of internal controls adequately covers major risks and business areas, with some modest weaknesses. In general, the control functions are independent from the business lines, and there is appropriate separation of duties. The control system supports accuracy in record-keeping practices and reporting systems, is adequately documented, and verifies compliance with laws and regulations, including consumer laws and regulations. Internal controls and information systems are adequately tested and reviewed, and the coverage, procedures, findings, and responses to audits and review tests are documented. Identified material weaknesses are given appropriate attention and management's actions to address material weaknesses are objectively reviewed and verified. The board or its audit committee reviews the effectiveness of internal audits and other control review activities. Any weaknesses or deficiencies that have been identified are modest in nature and in the process of being addressed.

Rating 3 (Fair). An assessment of Fair signifies that weaknesses exist in the system of internal controls that require more than normal supervisory attention. The weaknesses may involve a broad range of activities or be material to a major business line or activity. The weaknesses may include insufficient oversight of internal controls and audit by the board or its audit committee; unclear or conflicting lines of authority and responsibility; a lack of independence between control areas and business activities; or ineffective separation of duties. The internal control system may produce inadequate or untimely risk coverage and verification, including monitoring compliance with both safety and soundness and consumer laws and regulations; inaccurate records or financial, operational, or regulatory reporting; a lack of documentation for work performed; or a lack of timeliness in management review and correction of identified weaknesses. Weaknesses noted could have adverse effects on the safety and soundness of the institution if corrective action is not taken by management.

Rating 4 (Marginal). An assessment of Marginal represents a deficient internal control system that does not adequately address a number of significant risks to the institution. The deficiencies may include neglect of internal controls and audit by the board or its audit committee; conflicting lines of authority and responsibility; a lack of independence between control areas and business activities; or no separation of duties in critical areas. The internal control system may produce inadequate, untimely, or nonexistent risk coverage and verification in certain areas, including monitoring compliance with both safety and soundness and consumer laws and regulations; inaccurate records or financial, operational, or regulatory reporting; a lack of documentation for work performed; or infrequent management review and correction of identified weaknesses. The internal control

deficiencies warrant a high degree of supervisory attention because, unless properly addressed, they could seriously affect the safety and soundness of the institution.

Rating 5 (Unsatisfactory). An assessment of Unsatisfactory indicates a critical absence of an internal control system. There may be no oversight by the board or its audit committee; conflicting lines of authority and responsibility; no distinction between control areas and business activities; or no separation of duties. The internal control system may produce totally inadequate or untimely risk coverage and verification, including monitoring compliance with both safety and soundness and consumer laws and regulations; completely inaccurate records or regulatory reporting; a severe lack of documentation for work performed; or no management review and correction of identified weaknesses. Such deficiencies require immediate and close supervisory attention, as they could seriously jeopardize the continued viability of the institution.

Financial Condition Component

Rating 1 (Strong). A rating of 1 indicates that the consolidated BHC is financially sound in almost every respect; any negative findings are basically of a minor nature and can be handled in a routine manner. The capital adequacy, asset quality, earnings, and liquidity of the consolidated BHC are more than adequate to protect the company from reasonably foreseeable external economic and financial disturbances. The company generates more than sufficient cash flow to service its debt and fixed obligations with no harm to subsidiaries of the organization.

Rating 2 (Satisfactory). A rating of 2 indicates that the consolidated BHC is fundamentally financially sound, but may have modest weaknesses correctable in the normal course of business. The capital adequacy, asset quality, earnings and liquidity of the consolidated BHC are adequate to protect the company from external economic and financial disturbances. The company also generates sufficient cash flow to service its obligations; however, areas of weakness could develop into areas of greater concern. To the extent minor adjustments are handled in the normal course of business, the supervisory response is limited.

Rating 3 (Fair). A rating of 3 indicates that the consolidated BHC exhibits a combination of weaknesses ranging from fair to moderately severe. The company has less than adequate financial strength stemming from one or more of the following: modest capital deficiencies, substandard asset quality, weak earnings, or liquidity problems. As a result, the BHC and its subsidiaries are less resistant to adverse business conditions. The financial condition of the BHC will likely deteriorate if concerted action is not taken to correct areas of weakness. The company's cash flow is sufficient to meet immediate obligations, but may not remain adequate if action is not taken to correct weaknesses. Consequently, the BHC is vulnerable and requires more than normal supervision. Overall financial strength and capacity are still such as to pose only a remote threat to the viability of the company.

Rating 4 (Marginal). A rating of 4 indicates that the consolidated BHC has either inadequate capital, an immoderate volume of problem assets, very weak earnings, serious liquidity issues, or a combination of factors that are less than satisfactory. An additional weakness may be that the BHC's cash flow needs are met only by upstreaming imprudent dividends and/or fees from subsidiaries. Unless prompt action is taken to correct these conditions, they could impair future viability. BHCs in this category require close supervisory attention and increased financial surveillance.

Rating 5 (Unsatisfactory). A rating of 5 indicates that the volume and character of financial weaknesses of the BHC are so critical as to require urgent aid from shareholders or other sources to prevent insolvency. The imminent inability of such a company to service its fixed obligations and/or prevent capital depletion due to severe operating losses places its viability in serious doubt. Such companies require immediate corrective action and constant supervisory attention.

The Financial Condition Subcomponents

The financial condition subcomponents can be evaluated along business lines, product lines, or legal entity lines—depending on which type of review is most appropriate for the holding company structure.

Capital Adequacy

Rating 1 (Strong). A rating of 1 indicates that the consolidated BHC maintains more than adequate capital to support the volume and risk characteristics of all parent and subsidiary business lines and products; provide a sufficient cushion to absorb unanticipated losses arising from the parent and subsidiary activities; and support the level and composition of parent and subsidiary borrowing. In addition, a company assigned a rating of 1 has more than sufficient capital to provide a base for the growth of risk assets and the entry into capital markets as the need arises for the parent company and subsidiaries.

Rating 2 (Satisfactory). A rating of 2 indicates that the consolidated BHC maintains adequate capital to support the volume and risk characteristics of all parent and subsidiary business lines and products; provide a sufficient cushion to absorb unanticipated losses arising from the parent and subsidiary activities; and support the level and composition of parent and subsidiary borrowing. In addition, a company assigned a rating of 2 has sufficient capital to provide a base for the growth of risk assets and the entry into capital markets as the need arises for the parent company and subsidiaries.

Rating 3 (Fair). A rating of 3 indicates that the consolidated BHC may not maintain sufficient capital to ensure support for the volume and risk characteristics of all parent and subsidiary business lines and products; the unanticipated losses arising from the parent and subsidiary activities; or the level and composition of parent and subsidiary borrowing. In addition, a company assigned a rating of 3 may not maintain a sufficient capital position to provide a base for the growth of risk assets and the entry into capital markets as the need arises for the parent company and subsidiaries. The capital position of the consolidated BHC could quickly become inadequate in the event of asset deterioration or other negative factors and therefore requires more than normal supervisory attention.

Rating 4 (Marginal). A rating of 4 indicates that the capital level of the consolidated BHC is significantly below the amount needed to ensure support for the volume and risk characteristics of all parent and subsidiary business lines and products; the unanticipated losses arising from the parent and subsidiary activities; and the level and composition of parent and subsidiary borrowing. In addition, a company assigned a rating of 4 does not maintain a sufficient capital position to provide a base for the growth of risk assets and the entry into capital markets as the need arises for the parent company and subsidiaries. If left unchecked, the consolidated capital position of the company might evolve into weaknesses or conditions that could threaten the viability of the institution. The capital position of the consolidated BHC requires immediate supervisory attention.

Rating 5 (Unsatisfactory). A rating of 5 indicates that the level of capital of the consolidated BHC is critically deficient and in need of immediate corrective action. The consolidated capital position threatens the viability of the institution and requires constant supervisory attention.

Asset Quality

Rating 1 (Strong). A rating of 1 indicates that the BHC maintains strong asset quality across all parts of the organization, with a very low level of criticized and nonperforming assets. Credit risk across the organization is commensurate with management's abilities and modest in relation to credit risk management practices.

Rating 2 (Satisfactory). A rating of 2 indicates that the BHC maintains satisfactory asset quality across all parts of the organization, with a manageable level of criticized and nonperforming assets. Any identified weaknesses in asset quality are correctable in the normal course of business. Credit risk across the organization is commensurate with management's abilities and generally modest in relation to credit risk management practices.

Rating 3 (Fair). A rating of 3 indicates that the asset quality across all or a material part of the consolidated BHC is less than satisfactory. The BHC may be facing a decrease in the overall quality of assets currently maintained on and off balance sheet. The BHC may also be experiencing an increase in credit risk exposure that has not been met with an appropriate improvement in risk management practices. BHCs assigned a rating of 3 require more than normal supervisory attention.

Rating 4 (Marginal). A rating of 4 indicates that the BHC's asset quality is deficient. The level of problem assets and/or unmitigated credit risk subjects the holding company to potential losses that, if left unchecked, may threaten its viability. BHCs assigned a rating of 4 require immediate supervisory attention.

Rating 5 (Unsatisfactory). A rating of 5 indicates that the BHC's asset quality is critically deficient and presents an imminent threat to the institution's viability. BHCs assigned a rating of 5 require immediate remedial action and constant supervisory attention.

Earnings

Rating 1 (Strong). A rating of 1 indicates that the quantity and quality of the BHC's consolidated earnings over time are more than sufficient to make full provision for the absorption of losses and/or accretion of capital when due consideration is given to asset quality and BHC growth. Generally, BHCs with a 1 rating have earnings well above peer-group averages.

Rating 2 (Satisfactory). A rating of 2 indicates that the quantity and quality of the BHC's consolidated earnings over time are generally adequate to make provision for the absorption of losses and/or accretion of capital when due consideration is given to asset quality and BHC growth. Generally, BHCs with a 2 earnings rating have earnings that are in line with or slightly above peer-group averages.

Rating 3 (Fair). A rating of 3 indicates that the BHC's consolidated earnings are not fully adequate to make provisions for the absorption of losses and the accretion of capital in relation to company growth. The consolidated earnings of companies rated 3 may be further clouded by static or inconsistent earnings trends, chronically insufficient earnings, or less than satisfactory asset quality. BHCs with a 3 rating for earnings generally have earnings below peer-group averages. Such BHCs require more than normal supervisory attention.

Rating 4 (Marginal). A rating of 4 indicates that the BHC's consolidated earnings, while generally positive, are clearly not sufficient to make full provision for losses and the necessary accretion of capital. BHCs with earnings rated 4 may be characterized by erratic fluctuations in net income, poor earnings (and the likelihood of the development of a further downward trend), intermittent losses, chronically depressed earnings, or a substantial drop from the previous year. The earnings of such companies are generally substantially below peer-group averages. Such BHCs require immediate supervisory attention.

Rating 5 (Unsatisfactory). A rating of 5 indicates that the BHC is experiencing losses or a level of earnings that is worse than that described for the 4 rating. Such losses, if not reversed, represent a distinct threat to the BHC's solvency through erosion of capital. Such BHCs require immediate and constant supervisory attention.

Liquidity

Rating 1 (Strong). A rating of 1 indicates that the BHC maintains strong liquidity levels and well developed funds management practices. The parent company and subsidiaries have reliable access to sufficient sources of funds on favorable terms to meet present and anticipated liquidity needs.

Rating 2 (Satisfactory). A rating of 2 indicates that the BHC maintains satisfactory liquidity levels and funds management practices. The parent company and subsidiaries have access to sufficient sources of funds on acceptable terms to meet present and anticipated liquidity needs. Modest weaknesses in funds management practices may be evident, but those weaknesses are correctable in the normal course of business.

Rating 3 (Fair). A rating of 3 indicates that the BHC's liquidity levels or funds management practices are in need of improvement. BHCs rated 3 may lack ready access to funds on reasonable terms or may evidence significant weaknesses in funds management practices at the parent company or subsidiary levels. However, these deficiencies are considered correctable in the normal course of business. Such BHCs require more than normal supervisory attention.

Rating 4 (Marginal). A rating of 4 indicates that the BHC's liquidity levels or funds management practices are deficient. Institutions rated 4 may not have or be able to obtain a sufficient volume of funds on reasonable terms to meet liquidity needs at the parent company or subsidiary levels and require immediate supervisory attention.

Rating 5 (Unsatisfactory). A rating of 5 indicates that the BHC's liquidity levels or funds management practices are critically deficient and may threaten the continued viability of the institution. Institutions rated 5 require constant supervisory attention and immediate external financial assistance to meet maturing obligations or other liquidity needs.

Impact Component

The I component rating reflects the aggregate potential impact of the nondepository entities on the subsidiary depository institution(s). It is rated on a five point numerical scale. Ratings will be assigned in ascending order of supervisory concern as follows:

1—Low likelihood of significant negative impact;

2—Limited likelihood of significant negative impact;

3—Moderate likelihood of significant negative impact;

4—Considerable likelihood of significant negative impact; and

5—High likelihood of significant negative impact.

Rating 1 (Low Likelihood of Significant Negative Impact). A rating of 1 indicates that the nondepository entities of the BHC are highly unlikely to have a significant negative impact on the subsidiary depository institution(s) due to the sound financial condition of the nondepository entities, the strong risk management practices within the nondepository entities, or the corporate

structure of the BHC. The BHC maintains an appropriate capital allocation across the organization commensurate with associated risks. Intra-group exposures, including servicing agreements, are very unlikely to undermine the financial condition of the subsidiary depository institution(s). Parent company cash flow is sufficient and not dependent on excessive dividend payments from subsidiaries. The potential risks posed to the subsidiary depository institution(s) by strategic plans, the control environment, risk concentrations, or legal or reputational issues within or facing the nondepository entities are minor in nature and can be addressed in the normal course of business.

Rating 2 (Limited Likelihood of Significant Negative Impact). A rating of 2 indicates a limited likelihood that the nondepository entities of the BHC will have a significant negative impact on the subsidiary depository institution(s) due to the adequate financial condition of the nondepository entities, the satisfactory risk management practices within the parent nondepository entities, or the corporate structure of the BHC. The BHC maintains adequate capital allocation across the organization commensurate with associated risks. Intra-group exposures, including servicing agreements, are unlikely to undermine the financial condition of the subsidiary depository institution(s). Parent company cash flow is satisfactory and generally does not require excessive dividend payments from subsidiaries. The potential risks posed to the subsidiary depository institution(s) by strategic plans, the control environment, risk concentrations, or legal or reputational issues within the nondepository entities are modest and can be addressed in the normal course of business.

Rating 3 (Moderate Likelihood of Significant Negative Impact). A rating of 3 indicates a moderate likelihood that the aggregate impact of the nondepository entities of the BHC on the subsidiary depository institution(s) will have a significant negative impact on the subsidiary depository institution(s) due to weaknesses in the financial condition and/or risk management practices of the nondepository entities. The BHC may have only marginally sufficient allocation of capital across the organization to support risks. Intra-group exposures, including servicing agreements, may have the potential to undermine the financial condition of the subsidiary depository institution(s). Parent company cash flow may at times require excessive dividend payments from subsidiaries. Strategic growth plans, weaknesses in the control environment, risk concentrations or legal or reputational issues within the nondepository entities may pose significant risks to the subsidiary depository institution(s). A BHC assigned a 3 impact rating requires more than normal supervisory attention, as there could be adverse effects on the safety and soundness of the subsidiary depository institution(s) if corrective action is not taken by management.

Rating 4 (Considerable Likelihood of Significant Negative Impact). A rating of 4 indicates that there is a considerable likelihood that the nondepository entities of the BHC will have a significant negative impact on the subsidiary depository institution(s) due to weaknesses in the financial condition and/or risk management practices of the nondepository entities. A 4-rated BHC may have insufficient capital within the nondepository entities to support their risks and activities. Intra-group exposures, including servicing agreements, may also have the immediate potential to undermine the financial condition of the subsidiary depository institution(s). Parent company cash flow may be dependent on excessive dividend payments from subsidiaries. Strategic growth plans, weaknesses in the control environment, risk concentrations or legal or reputational issues within the nondepository entities may pose considerable risks to the subsidiary depository institution(s). A BHC assigned a 4 impact rating requires immediate remedial action and close supervisory attention because the nondepository entities could seriously affect the safety and soundness of the subsidiary depository institution(s).

Rating 5 (High Likelihood of Significant Negative Impact). A rating of 5 indicates a high likelihood that the aggregate impact of the nondepository entities of the BHC on the subsidiary depository institution(s) is or will become significantly negative due to substantial weaknesses in the financial condition and/or risk management practices of the nondepository entities. Strategic growth plans, a deficient control environment, risk concentrations or legal or reputational issues within the nondepository entities may pose critical risks to the subsidiary depository institution(s). The parent company also may be unable to meet its obligations without excessive support from the subsidiary depository institution(s). The BHC requires immediate and close supervisory attention, as the nondepository entities seriously jeopardize the continued viability of the subsidiary depository institution(s).

(D) (Depository Institutions) Component

The (D) component identifies the overall condition of the subsidiary depository institution(s) of the BHC. For BHCs with only one subsidiary depository institution, the (D) component rating generally will mirror the CAMELS composite rating for that depository institution. To arrive at a (D) component rating for BHCs with multiple subsidiary depository institutions, the CAMELS composite ratings for each of the depository institutions should be weighted, giving consideration to asset size and the relative importance of each depository institution within the overall structure of the organization. In general, it is expected that the resulting (D) component rating will reflect the lead depository institution's CAMELS composite rating.

If in the process of analyzing the financial condition and risk management programs of the consolidated organization, a major difference of opinion regarding the safety and soundness of the subsidiary depository institution(s) emerges between the Federal Reserve and the depository institution's primary regulator, then the (D) rating should reflect the Federal Reserve's evaluation.

By order of the Board of Governors of the Federal Reserve System.

Dated: December 1, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–26723 Filed 12–3–04; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than December 20, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Rogers Investments, LP, Russellville, Alabama, with Dianne Rogers Barnes, Marietta, Georgia, and Robert Isaac Rogers, Jr., Russellville, Alabama, as general partners; Rogers Family Holdings, LLC, Russellville, Alabama, with Dianne Rogers Barnes and Robert Isaac Rogers, Jr., as managers, and whose members include the two managers and Anne C. Rogers, Russellville, Alabama, the R.I. Rogers, Sr. Marital Trust GST Non—Exempt, the Robert I. Rogers, Sr. GST Exempt Family Trust, and the Robert I. Rogers, Sr. Marital Trust GST Exempt, with Robert Isaac Rogers, Jr., and Dianne Rogers Barnes serving as trustees of the trusts; and Robert Isaac Rogers, Jr., and Dianne Rogers Barnes; to collectively retain voting shares of Valley Bancshares, Inc., and thereby indirectly retain voting shares of Valley State Bank, both of Russellville, Alabama.

Board of Governors of the Federal Reserve System, November 30, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–26712 Filed 12–3–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 2004.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Great Western Bancorp, Inc., Phoenix, Arizona; to become a bank holding company by acquiring at least 45 percent of the voting shares of Western National Bank, Phoenix, Arizona (in organization).

Board of Governors of the Federal Reserve System, November 30, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–26711 Filed 12–3–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Settings, 2005

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice for public comment.

SUMMARY: The purpose of this notice is to request public comment on draft Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-care Settings, 2005 (Guidelines). These Guidelines are available at the CDC Web site at *http://www.cdc.gov/nchstp/tb/Federal_Register/default.htm* as a pdf file. The Guidelines will be used by infection control staff, healthcare epidemiologists, healthcare administrators, facility managers, and other persons responsible for developing, implementing, and evaluating infection-control programs for healthcare settings across the continuum of patient care. These Guidelines update the CDC Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Facilities and were last published in 1994.

The 2005 draft Guidelines reflect shifts in the epidemiology of tuberculosis, advances in scientific understanding, and changes in health-care practice that have occurred in the United States in the last decade.

DATES: Comments on the draft Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Settings, 2005, must be received in writing on or before February 4, 2005.

ADDRESSES: Comments on the draft Guidelines should be labeled ''Public comment on Draft Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Settings, 2005,'' and submitted by e-mail to *TBinfectioncontrol@cdc.gov*. Please include the specific section, paragraph, and page number for each comment. If unable to submit electronically, comments may be mailed to Public Comment on Draft Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Settings 2005, Centers for Disease Control and Prevention, Division of Tuberculosis Elimination, 1600 Clifton Road, NE., Mailstop E10, Atlanta, Georgia 30333. Comments may also be faxed to 404–929–2676.

FOR FURTHER INFORMATION CONTACT: Lauren Lambert, Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E10, Atlanta, Georgia 30333. Telephone: (404) 639–8120. Email: *TBinfectioncontrol@cdc.gov*.

SUPPLEMENTARY INFORMATION: As stated above, the 2005 draft Guidelines reflect shifts in the epidemiology of tuberculosis, advances in scientific understanding, and changes in health-care practice that have occurred in the United States in the last decade. In the context of diminished risk of health-care-associated transmission of *M. tuberculosis,* the 2005 Draft Guidelines places emphasis on actions needed to maintain momentum and expertise needed to avert another resurgence of tuberculosis and to eliminate the lingering threat to healthcare workers, which is mainly from patients or others with unsuspected and undiagnosed infectious tuberculosis disease. Whereas previous Guidelines were aimed primarily at hospital-based facilities, the 2005 CDC Guidelines have been expanded to address a broader concept: health-care-associated settings go beyond the previously defined facilities.

CDC expects to publish final Guidelines in 2005.

Dated: November 24, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–26710 Filed 12–3–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0395]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Application for Participation in the Medical Device Fellowship Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 5, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application for Participation in the Medical Device Fellowship Program—(OMB Control Number 0910–0551)—Extension

Collecting applications for the Medical Device Fellowship Plan will allow FDA's Center for Devices and Radiological Health (CDRH) to easily and efficiently elicit and review information from students and health care professionals who are interested in becoming involved in CDRH activities. The process will reduce the time and cost of submitting written documentation to the agency and lessen the likelihood of applications being misrouted within the agency mail system. It will assist the agency in promoting and protecting the public health by encouraging outside persons to share their expertise with CDRH.

In the **Federal Register** of September 20, 2004 (69 FR 56228), FDA published a 60–day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1–ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA Form 3608	100	1	100	1	100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on the number of inquiries that have been received about the program and requests for application forms over the past year. We anticipate the number of interested individuals and universities, and subsequent number of applications, to increase as we continue to develop an outreach program and an alumni base.

In addition, we would expect applicants who are not selected for their preferred term of employment to reapply at a later date. For these reasons we would expect that the number of applications submitted in the second and third years would increase substantially. During the first year, we expect to receive 100 applications. We believe that we will receive approximately 100 applications the second year and 100 applications the third year. FDA believes it will take individuals 1 hour to complete the application. This is based on similar applications submitted to FDA.

Dated: November 26, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26672 Filed 12–3–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for a Nonvoting Member Representing Industry Interests on a Public Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) requests nominations for a nonvoting industry representative to serve on the Cellular Tissue and Gene Therapies Advisory Committee (formerly the Biological Response Modifiers Advisory Committee) under the purview of the Center for Biologics Evaluation and Research (CBER).

DATES: Industry organizations interested in participating in the selection of a nonvoting member to represent industry for the vacancy listed in this notice must send a letter to FDA by January 5, 2005.

Concurrently, nomination materials for prospective candidates should be sent to FDA by January 5, 2005. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative.

ADDRESSES: All letters of interest and nominations should be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: Gail Dapolito, Division of Scientific Advisors and Consultants (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20857–1448, 301–827–0314, e-mail: *dapolito@cber.fda.gov.*

SUPPLEMENTARY INFORMATION: The agency requests nominations for a no-voting industry representative to the advisory committee identified below.

I. Function

The Cellular, Tissue and Gene Therapies Advisory Committee (formerly the Biological Response Modifiers Advisory Committee) reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies and xenotransplantation products which are intended for transplantation, implantation, infusion and transfer in the prevention and treatment of a broad spectrum of human diseases and in the reconstruction, repair or replacement of tissues for various conditions. The committee also considers the quality and relevance of FDA's research program which provides scientific support for the regulation of these products, and makes appropriate recommendations to the Commissioner of Food and Drugs.

II. Selection Procedure

Any organization in the biologics manufacturing industry wishing to participate in the selection of a nonvoting member to represent industry on the Cellular, Tissue and Gene Therapies Advisory Committee (formerly the Biological Response Modifiers Advisory Committee) should send a letter stating that interest to FDA contact identified above within 30 days of publication of this notice. Persons who nominate themselves as an industry representative for the advisory committee will not participate in the selection process. It is, therefore, recommended that nominations be made by someone within an organization, trade association, or firm who is willing to participate in the selection process. Within the subsequent 30 days, FDA will send a letter to each organization and a list of all nominees along with their resumes. The letter will state that the interested organizations are responsible for conferring with one another to select a candidate, within 60 days after receiving the letter, to serve as the nonvoting member representing industry interests on the advisory committee. If no individual is selected within the 60 days, the Commissioner of Food and Drugs may select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may nominate themselves or an organization representing the biologics manufacturing industry may nominate one or more individuals to serve as nonvoting industry representatives. A current curriculum vitae (which includes the nominee's business address, telephone number, and e-mail address) and the name of the committee of interest should be sent to FDA contact person. FDA will forward all nominations to the organizations that have expressed interest in participating in the selection process for that committee.

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees. Therefore, the agency encourages nominations for appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: November 29, 2004.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 04–26673 Filed 12–3–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Clinicians To Become Commissioned Officers; Recruitment of Sites for Assignment of Commissioned Officers

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted from clinicians seeking to be hired as commissioned officers in the U.S. Public Health Service and from sites seeking the assistance of these commissioned officers. These commissioned officers will be primary care clinicians who are physicians, dentists, family nurse practitioners, physician assistants, clinical psychologists, clinical social workers and registered nurses (baccalaureate level) and will be considered for placement in ambulatory community-based systems of care. These officers will be assigned by the National Health Service Corps (NHSC) Ready Responder Program to the neediest Health Professional Shortage Areas throughout the Nation. The NHSC will pay the salaries, moving expenses and benefits for these commissioned officers.

These officers will be part of a mobile cadre of health care professionals who, in addition to the services they will provide to patients at their assigned sites, may be called upon to respond to regional and/or national emergencies. The NHSC will assist the officers in acquiring, maintaining and enhancing emergency response skills. Their initial assignments will be up to three years in duration, after which, should these clinicians choose to stay in the U.S. Public Health Service, they will progress to new assignments.

Eligible Applicants

Clinicians—Applicants must file a U.S. Public Health Service Commissioned Corps application and meet the requirements for such commissioning. For example, all clinicians must be U.S. citizens under 44 years of age (age may be offset by prior active duty Uniformed Service time and/or civil service work experience in a Public Health Service (PHS) agency at a PHS site at a level commensurate with the duties of a commissioned officer), and have served less than 8 years of active duty if the clinician is/was a member of another Uniformed Service. Also, applicants must meet medical requirements, and pass an initial suitability investigation.

In addition, prior to the start of their assignment at an NHSC site, these clinicians must meet the following requirements:

(1) Physicians must have completed a residency in Family Practice, Internal Medicine, combined Internal Medicine and Pediatrics, General Psychiatry or Obstetrics and Gynecology and be a diplomate of their respective Allopathic or Osteopathic Specialty Boards;

(2) Family Nurse Practitioners must have national certification by the American Nurses Credentialing Center or the American Academy of Nurse Practitioners;

(3) Physician Assistants must have national certification by the National Commission on Certification of Physician Assistants;

(4) Clinical Psychologists must have a doctoral degree in clinical psychology, have a minimum of 1 year of postgraduate supervised clinical experience, have passed the Examination for Professional Practice in Psychology, and be able to practice independently and unsupervised as a clinical psychologist;

(5) Clinical Social Workers must have a masters degree in social work, have passed the Association of Social Work

Board's (ASWB) Clinical or Advanced licensing exam prior to July 1, 1998 or the ASWB Clinical exam on or after July 1, 1998, and be able to practice independently and unsupervised as a clinical social worker; and

(6) All clinicians must possess a current, unrestricted, and valid license to practice their health profession in at least one of the 50 States, Washington, DC, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or Guam.

Sites—Applicants must be located in a Health Professional Shortage Area (HPSA) and submit a Proposal for Use of a Commissioned Officer 2005. Applicants must also submit a Recruitment and Retention Assistance Application, if not yet approved as an NHSC site. Sites applying for a physician, family nurse practitioner, physician assistant or registered nurse must be located in a primary medical care HPSA; sites applying for a dentist must be located in a dental HPSA; and sites applying for a psychiatrist, a clinical psychologist, or a clinical social worker must be located in a mental health HPSA. All sites to which NHSC clinicians are assigned must accept assignment under Medicare, have appropriate agreements with the applicable State entity to participate in Medicaid and the State Children's Health Insurance Program, see all patients regardless of their ability to pay, and use and post a discounted fee plan. Sites must also understand and accept that these officers will periodically be away from their assigned locations as they train for, or respond to, a regional and/or national health emergency.

Application Requests, Dates and Addresses

Application materials are available for downloading via the Web at *http://nhsc.bhpr.hrsa.gov* or by calling the National Health Service Corps ''Call Center'' at 1–800–221–9393.

Clinicians—The original of the completed application must be mailed or delivered no later than September 30, 2005 to: Office of Commissioned Corps Operations, ATTN: Division of Commissioned Corps Assignments, 1101 Wootton Parkway, Suite 100, Rockville, Maryland 20852. A copy of the completed application must be postmarked or delivered no later than September 30, 2005 to: HRSA Commissioned Corps Operations Office, Parklawn Building, Room 14A–12, 5600 Fishers Lane, Rockville, MD 20857. Clinicians are encouraged to submit an application early, as applications will be considered as soon as they are received. Applications delivered or postmarked after the deadline date or sent to a different address will be returned to the applicant and not considered.

Sites—Completed applications must be postmarked or delivered to the NHSC by no later than September 30, 2005. Site applications will be evaluated as soon as they are received at NHSC headquarters. Sites will be deemed qualified based on the quality of the application submitted and the score of the HPSA in which they are located. Preference will be given to NHSC-approved sites in HPSAs with higher scores (the neediest HPSAs). Officers will be assigned to qualified sites on an ongoing basis. Sites are encouraged to apply early so as to have a better chance of acquiring one of the commissioned officers. The number of qualified sites is expected to exceed the limited supply of commissioned officers. Completed site applications should be mailed or delivered to: National Health Service Corps, Effectiveness and Preparedness Unit, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, MD 20857. Applications delivered or postmarked after the deadline date or sent to a different address will be returned to the applicant and not considered.

Dated: November 24, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–26674 Filed 12–3–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS–2004–0015]

Privacy Act of 1974; Systems of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to add three systems of records to its inventory of record systems. The systems of records are: (1) The Freedom of Information Act and Privacy Act System; (2) the DHS Mailing and Other Lists System; and (3) the Civil Rights and Civil Liberties Matters System.

DATES: Comments must be received on or before January 5, 2005.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2004–0015, by one of the following methods:

- EPA Federal Partner EDOCKET Web Site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site. DHS has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET). DHS and its component agencies (excluding the United States Coast Guard and Transportation Security Administration) will use the EPA Partner EDOCKET system. The USCG and TSA (legacy Department of Transportation (DOT) agencies) will continue to use the DOT Docket Management System until full migration to the electronic rulemaking federal docket management system in 2005.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–772–5036 (This is not a toll-free number).
- Mail: Department of Homeland Security, Attn: Privacy Office/Nuala O'Connor Kelly, Chief Privacy Officer/202–772–9848, Washington, DC 20528.
- Hand Delivery/Courier: Department of Homeland Security, Attn: Privacy Office/Nuala O'Connor Kelly, Chief Privacy Officer/202–772–9848, Anacostia Naval Annex, 245 Murray Lane, SW., Building 410, Washington, DC 20528, 7:30 a.m. to 4 p.m.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nuala O'Connor Kelly, DHS Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528 by telephone 202–772–9848 or facsimile 202–772–5036.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) is establishing two new department-wide systems of records and one new system of records within DHS headquarters under the Privacy Act of 1974 (5 U.S.C. 552a). These systems of records are part of DHS's ongoing integration and management efforts.

The Privacy Act embodies fair information principles in a statutory

framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Homeland Security Act of 2002, Public Law 107–296, section 222, 116 Stat. 2135, 2155 (Nov. 25, 2002) (HSA), requires the Secretary of DHS to appoint a senior official to oversee implementation of the Privacy Act and to undertake other privacy-related activities. The systems of records being published today help to carry out the DHS Chief Privacy Officer's statutory activities.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the Agency.

DHS is here publishing the descriptions of three systems of records. Two Department-wide systems cover records kept by all component agencies within DHS as well as DHS Headquarters relating to the processing of Freedom of Information Act and Privacy Act requests, and mailing and other lists used within DHS for administrative and outreach purposes.

The other system covers DHS records that pertain to civil rights and civil liberties complaints submitted to the DHS Office of Civil Rights and Civil Liberties (CRCL). Section 705 of the HSA, 116 Stat. at 2220–21, requires the DHS Officer for Civil Rights and Civil Liberties, who is appointed by the Secretary, to review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department and to submit a report on these activities. The CRCL system of records will maintain the records that are created and obtained in order to carry out this statutory mandate.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of these new systems of records to the Office of Management and Budget (OMB) and to the Congress.

DHS/ALL 001

SYSTEM NAME:

Department of Homeland Security (DHS) Freedom of Information Act (FOIA) and Privacy Act (PA) Record System.

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

This system of records is located in the DHS Privacy Office, Washington, DC 20528, as well as in the component FOIA/PA offices listed in ''System Managers,'' below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit FOIA and/or PA requests to DHS; individuals who appeal DHS denial of their FOIA/PA requests; individuals whose requests, appeals, and/or records have been referred to DHS by other agencies; and, in some instances, attorneys or other persons representing individuals submitting such requests and appeals, individuals who are the subjects of such requests, and/or DHS personnel assigned to handle such requests or appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records received, created, or compiled in response to FOIA/PA requests or appeals, including: the original requests and administrative appeals; intra- or inter-agency memoranda, correspondence, notes and other documentation related to the processing of the FOIA/PA request; correspondence with the individuals or entities that submitted the requested records and copies of the requested records, including when those records might contain confidential business information or personal information. Types of information in the records may include: Requesters' and their attorneys' or representatives' names, addresses, telephone numbers, and FOIA case numbers; names, office telephone numbers, and office routing symbols of DHS employees; and names, telephone numbers, and addresses of the submitter of the information requested. The system also contains copies of all documents relevant to appeals and lawsuits under FOIA and the PA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 552, 552a; 44 U.S.C. 3101; E.O. 12958, as amended.

PURPOSE(S):

The system is maintained for the purpose of processing records requests and administrative appeals under the FOIA as well as access and amendment requests and appeals under the PA; for the purpose of participating in litigation arising from such requests and appeals; and for the purpose of assisting DHS in carrying out any other responsibilities under the FOIA or the PA.

ROUTINE USES OF THESE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law (*i.e.*, criminal, civil or regulatory), the relevant records may be referred to an appropriate Federal, state, territorial, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting such a violation or enforcing or implementing such law.

(2) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

(3) To a Federal, state, territorial, tribal, local, international, or foreign agency or entity for the purpose of consulting with that agency or entity (a) to assist in making a determination regarding access to or amendment of information, or (b) for the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

(4) To a federal agency or entity that furnished the record or information for the purpose of permitting that agency or entity to make a decision regarding access to or correction of the record or information, or to a federal agency or entity for purposes of providing guidance or advice regarding the handling of particular requests.

(5) To the Department of Justice or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS, or (b) any employee of DHS in his/her official

capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation.

(6) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

(7) To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(8) To the Department of Justice, including the United States Attorney's Offices, or a consumer reporting agency for further collection action on any delinquent debt when circumstances warrant.

(9) To the Office of Management and Budget or the Department of Justice to obtain advice regarding statutory and other requirements under the Freedom of Information Act or the Privacy Act of 1974.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper and/or in digital or other electronic form. Digital and other electronic images are stored on a storage area network in a secured environment.

RETRIEVABILITY:

Records are retrieved by the name, unique case identifier, social security number, or alien identification number of the requester/appellant or the attorney or other individual representing the requester, or other identifier assigned to the request or appeal.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. Classified information is appropriately stored in accordance with applicable requirements. DHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 14. Files may be retained for up to six years. For requests that result in litigation, the files related to that litigation will be retained for three years after final court adjudication.

SYSTEM MANAGER(S) AND ADDRESSES:

I. For Headquarters components of the Department of Homeland Security, the System Manager is the Director of Departmental Disclosure, U.S. Department of Homeland Security, Washington, DC 20528.

II. For operational components that comprise the U.S. Department of Homeland Security, the System Managers are as follows:

United States Coast Guard, FOIA Officer/PA System Manager, Commandant, CG–611, U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001

United States Secret Service, FOIA Officer/PA System Manager Suite 3000, 950 H Street, NW., Washington, DC 20223

United States Citizenship and Immigration Services, ATTN: Records Services Branch (FOIA/PA), 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529

Under Secretary for Emergency Preparedness and Response (includes Federal Emergency Management Agency), FOIA Officer/PA System Manager, 500 C Street, SW., Room 840, Washington, DC 20472

Under Secretary for Border and Transportation Security, Department of Homeland Security, C/o Departmental Disclosure Officer, Privacy Office, Washington, DC 20528

United States Customs and Border Protection, FOIA Officer/PA System Manager, Disclosure Law Branch, Office of Regulations & Rulings, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW (Mint Annex)., Washington, DC 20229

United States Immigration and Customs Enforcement, FOIA Officer/PA System Manager, Office of Investigation, Chester Arthur Building (CAB), 425 I Street, NW., Room 4038, Washington, DC 20538

Transportation Security Administration, FOIA Officer/PA System Manager, Office of Security, West Building, 4th Floor, Room 432–N, TSA–20, 601 South 12th Street, Arlington, VA 22202–4220

Federal Protective Service, FOIA Officer/PA System Manager, 1800 F Street, NW., Suite 2341, Washington, DC 20405

Federal Law Enforcement Training Center, Disclosure Officer, 1131 Chapel Crossing Road, Building 94, Glynco, GA 31524

Under Secretary for Science & Technology, FOIA Officer/PA System Manager, Washington, DC 20528

Under Secretary for Information Analysis and Infrastructure Protection, FOIA Officer/PA System Manager, Washington, DC 20528

Under Secretary for Management, FOIA Officer/PA System Manager, 7th and D Streets, SW., Room 4082, Washington, DC 20472

Office of Inspector General, Records Management Officer, Washington, DC 20528

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the appropriate System Manager(s) identified above.

RECORD ACCESS PROCEDURES:

A request for access to records in this system may be made by writing to the System Manager, identified above, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

CONTESTING RECORD PROCEDURES:

Same as ''Record Access Procedures,'' above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from those individuals who submit requests and administrative appeals pursuant to the FOIA and the PA; the agency records searched and identified as responsive in the process of responding to such requests and appeals; Departmental personnel assigned to handle such requests and appeals; other agencies or entities that have referred to DHS requests concerning DHS records, or that have consulted with DHS regarding handling of particular requests; and submitters or subjects of records or information that have provided assistance to DHS in making access or amendment determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5). When DHS is processing Privacy Act and/or FOIA requests, responding to appeals, or participating in FOIA or Privacy Act litigation, exempt materials from other systems of records may become part of the records in this system. To the extent that copies of exempt records from other systems of records are entered into this system, DHS hereby claims the same exemptions for those records that are claimed for the original primary systems of records from which they originated.

DHS/ALL 002

SYSTEM NAME:

DHS Mailing and Other Lists System

SECURITY CLASSIFICATION:

Sensitive

SYSTEM LOCATION:

This system of records is located in the Department of Homeland Security, Washington, DC 20528, as well as in the component DHS offices listed in ''System Managers,'' below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons appearing on mailing lists maintained throughout DHS to facilitate mailings to multiple addressees and other activities in furtherance of DHS duties. These lists include: Persons who have requested DHS material; members of the news media; DHS employees and the individual(s) they list as emergency contacts, former employees, persons who serve on DHS boards and committees and other individuals having business with DHS who have provided contact information; individuals who enter contests sponsored by DHS; contractors or other individuals who work or attend meetings at DHS; and other persons with an interest in DHS programs, contests, exhibits, conferences, training courses, and similar events.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, age, school grade, school name, home telephone numbers, cellular phone numbers, pager numbers, numbers where individuals can be reached while on travel or otherwise away from the office, home addresses, electronic mail addresses, names and phone numbers of family members or other contacts, position/title, business affiliation (where appropriate); and other contact information provided to the Department by individuals covered by this system of records or derived from other sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

The system is maintained for the purpose of mailing informational literature to those who request it; maintaining lists of individuals who attend meetings; maintaining contact and emergency contact information for DHS employees and contractors working on site at DHS; maintaining information regarding individuals who enter contests sponsored by DHS; and for other purposes for which mailing or contact lists may be created.

ROUTINE USES OF THESE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To DHS employees, contractors, consultants or others, when necessary to perform a function or service related to this system of records for which they have been engaged. Such recipients are required to comply with the Privacy Act, 5 U.S.C. 552a, as amended.

(2) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

(3) To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(4) To the Department of Justice, United States Attorney's Office, or a consumer reporting agency for further collection action on any delinquent debt when circumstances warrant.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are on paper and/or in digital or other electronic form. Digital and other electronic images are stored on a storage area network in a secured environment.

RETRIEVABILITY:

Information typically will be retrieved by an identification number assigned by computer, by e-mail address, or by name of an individual.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. DHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

Some records are retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 12 (Communications Records). Other records are retained and disposed of in accordance with General Records Schedule 1. Files may be retained for up to three years or less depending on the record. For records that may be used in litigation, the files related to that litigation will be retained for three years after final court adjudication.

SYSTEM MANAGER(S) AND ADDRESSES:

I. For Headquarters components of the Department of Homeland Security, the System Manager is the Director of Departmental Disclosure, U.S. Department of Homeland Security, Washington, DC 20528.

II. For operational components that comprise the U.S. Department of Homeland Security, the System Managers are as follows:

United States Coast Guard, FOIA Officer/PA System Manager, Commandant, CG–611, U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

United States Secret Service, FOIA/PA System Manager, Suite 3000, 950 H Street, NW., Washington, DC 20223.

Under Secretary for Emergency Preparedness and Response (includes Federal Emergency Management Agency), FOIA/PA System Manager, 500 C Street, SW., Room 840, Washington, DC 20472.

Under Secretary for Border and Transportation Security, Department of Homeland Security, c/o Departmental Disclosure Officer, Privacy Office, Washington, DC 20528.

United States Citizenship and Immigration Services, U.S. Citizenship and Immigration Services, ATTN: Records Services Branch (FOIA/PA), 111 Massachusetts Ave, NW., 2nd Floor, Washington, DC 20529.

Bureau of Customs and Border Protection, FOIA/PA System Manager, Disclosure Law Branch, Office of Regulations & Rulings, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., (Mint Annex) Washington, DC 20229.

Bureau of Immigration and Customs Enforcement, FOIA/PA System Manager, Office of Investigation, Chester Arthur Building (CAB), 425 I

Street, NW., Room 4038, Washington, DC 20538
Transportation Security Administration, FOIA/PA System Manager, Office of Security, West Building, 4th Floor, Room 432–N, TSA–20, 601 South 12th Street, Arlington, VA 22202–4220
Federal Protective Service, FOIA/PA System Manager, 1800 F Street, NW., Suite 2341, Washington, DC 20405
Federal Law Enforcement Training Center, Disclosure Officer, 1131 Chapel Crossing Road, Building 94, Glynco, GA 31524
Under Secretary for Science & Technology, FOIA/PA System Manager, Washington, DC 20528
Under Secretary for Information Analysis and Infrastructure Protection, Nebraska Avenue Complex, Building 19, 3rd floor, Washington, DC 20528
Office of Inspector General, Records Management Officer, Washington, DC 20528

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the appropriate System Manager(s) identified above.

RECORD ACCESS PROCEDURES:

A request for access to records in this system may be made by writing to the System Manager, identified above, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

CONTESTING RECORD PROCEDURES:

Same as ''Record Access Procedures,'' above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from affected individuals/organizations, public source data, other government agencies and/or information already in other DHS records systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DHS/CRCL 001

SYSTEM NAME:

Civil Rights and Civil Liberties (CRCL) Matters

SYSTEM LOCATION:

Office of Civil Rights and Civil Liberties, Department of Homeland Security (DHS), Washington, DC 20528.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who contact CRCL to allege abuses of civil rights and civil liberties, or to allege racial or ethnic profiling by DHS, its employees, contractors, grantees, or others acting under the authority of the Department; persons alleged to be involved in civil rights or civil liberties abuses or racial or ethnic profiling, victims or witnesses to such abuse; third parties not directly involved in the alleged incident, but identified as relevant persons to an investigation; and DHS employees and contractors.

Identifying data contained in this information may include, but is not limited to: The name of persons making a report; home or work address, telephone number, e-mail address; social security number; alien registration number; and other unique identifiers assigned to the information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system consist of complaints, comments, investigative notes and memoranda, correspondence, evidentiary documents and material, and reports relating to the resolution of complaints. The system also contains similar information relating to witnesses, persons involved in the alleged incident or other persons with relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 345; 44 U.S.C. 3101.

PURPOSE(S):

The purpose of this system is to allow the Officer for Civil Rights and Civil Liberties and staff to maintain relevant information necessary to review complaints or comments about alleged civil rights or civil liberties violations, or racial or ethnic profiling tied to the Department's activities. The system will also track and maintain investigative files and records of complaint resolution and other matters, and facilitate oversight and accountability of the Department's civil rights and civil liberties complaint resolution mechanisms.

ROUTINE USES OF THESE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To another federal agency with responsibility for labor or employment relations or other matters, when that agency has jurisdiction over matters reported to CRCL;

(2) Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law (*i.e.* criminal, civil or regulatory) the relevant records may be referred to an appropriate Federal, state, territorial, tribal, local, international, or foreign agency law enforcement agency or other appropriate authority charged with investigating or prosecuting such a violation or enforcing or implementing such law;

(3) To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property;

(4) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains;

(5) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(6) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records;

(7) To the National Archives and Records Administration, or other federal government agencies pursuant to records management operations conducted under the authority of 44 U.S.C. 2904 and 2906;

(8) To the Department of Justice or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that disclosure is relevant and necessary to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in an electronic database or paper media and may include physical objects as exhibits.

RETRIEVABILITY:

Information may be retrieved by name, incident code, unique personal identifier, or other identifying data.

SAFEGUARDS:

Records are stored in a secure, guarded, facility, at which a badge must be shown to enter. The storage area is locked when not attended by CRCL personnel. Electronic records are maintained in accordance with DHS security policies contained in the DHS Information Technology Security Program Handbook and the DHS Sensitive Systems Handbook. Electronic records are password-protected and can only be accessed from a DHS work station. All CRCL personnel are briefed prior to gaining initial access and annually thereafter.

RETENTION AND DISPOSAL:

These records are governed by General Records Schedule 1, Item 25 and will be retained and disposed of in accordance with that schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Officer for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager named above.

RECORD ACCESS PROCEDURE:

A request for access to records in this system may be made by writing to the System Manager, identified above, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

CONTESTING RECORD PROCEDURE:

Same as ''Records access procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from correspondence, telephone calls, e-mails, facsimiles, or other means of reporting allegations of civil rights or civil liberties abuses, or racial or ethnic profiling.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain portions of CRCL's files containing information relating to ongoing criminal investigations or national security activities may be exempt from disclosure pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5).

Dated: December 1, 2004.

Nuala O'Connor Kelly,

Chief Privacy Officer.

[FR Doc. 04–26744 Filed 12–3–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA's Debt Collection Financial Statement, which requests personal financial data from individual debtors.

SUPPLEMENTARY INFORMATION: Under FEMA's debt collection regulations, 44 CFR 11.36(b), FEMA is required to maintain current credit data on FEMA's debtors including, the individual debtor's own financial statement, executed under penalty for false claim, concerning his/her assets and liabilities and his/her income and expenses. FEMA Form 22–13, Debt Collection Financial Statement, collects such data directly from the individual debtor. FEMA uses this data to understand the debtor's financial condition and locate their assets to accurately determine a debtor's ability to pay debts or to set arrangements for installment payments of debts.

Collection of Information

Title: Debt Collection Financial Statement.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0011.

Form Numbers: FEMA Form 22–13, Debt Collection Financial Statement.

Abstract: FEMA may request debtors to provide personal financial information on FEMA Form 22–13 concerning their current financial position. With this information, FEMA evaluates whether to allow debtors to pay the FEMA debts under installment repayment agreements and if so, under what terms. FEMA also uses this data to determine whether to compromise, suspend, or completely terminate collection efforts on respondent's debts. This data is also used to locate the debtor's assets if the debts are sent for judicial enforcement.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 225 hours.

Estimated Costs: The annualized cost for this information collection is $5100, based on 300 respondents spending 45 minutes (.75 hours) per form at an average hourly rate of $22.27 per 2003 Department of Labor's National Employment, Hours, and Earnings Tables.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Michael H. Komack, Systems Accountant, FEMA, Financial and Acquisition Management Division (FAMD), Management and Policy

Analysis Branch (MPA), (202) 646–4164 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: November 30, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–26696 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–49–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1549–DR]

Alabama; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1549–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATES: November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Anthony A. Russell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael J. Hall as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–26706 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1571–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1571–DR), dated November 15, 2004, and related determinations.

EFFECTIVE DATE: November 15, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 15, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from a severe winter storm, tidal surges, and flooding on October 18–20, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Bering Strait Regional Education Attendance Area and Northwest Arctic Borough for Public Assistance.

Bering Strait Regional Education Attendance Area, Northwest Arctic Borough, and the City of Mekoryuk in the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program).

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–26698 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1572–DR]

Delaware; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major

disaster for the State of Delaware (FEMA–1572–DR), dated November 15, 2004, and related determinations.

EFFECTIVE DATE: November 15, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 15, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Delaware, resulting from severe storms, tornadoes, and flooding from the remnants of Hurricane Jeanne, on September 28–October 2, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Delaware.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Delaware to have been affected adversely by this declared major disaster:

New Castle County for Public Assistance.

All counties within the State of Delaware are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–26697 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1561–DR]

Florida; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1561–DR), dated September 26, 2004, and related determinations.

EFFECTIVE DATE: November 17, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 17, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–26701 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1551–DR]

Florida; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1551–DR), dated September 16, 2004, and related determinations.

EFFECTIVE DATE: November 17, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 17, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–26704 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1560–DR]

Georgia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1560–DR), dated September 24, 2004, and related determinations.

EFFECTIVE DATE: November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Jesse F. Munoz, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of James N. Russo as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–26702 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1554–DR]

Georgia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1554–DR), dated September 18, 2004, and related determinations.

EFFECTIVE DATE: November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Jesse F. Munoz, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of James N. Russo as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–26703 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1564–DR]

New York; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1564–DR), dated October 1, 2004, and related determinations.

EFFECTIVE DATE: November 16, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include Individual Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 1, 2004:

Madison, Oneida, and Wayne Counties for Individual Assistance.

Allegany, Broome, Cattaraugus, Monroe, Niagara, Onondaga, Orange, Orleans, Steuben, Sullivan, and Ulster Counties for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–26699 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1564–DR]

New York; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–1564–DR), dated October 1, 2004, and related determinations.

EFFECTIVE DATE: November 16, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is now August 13, 2004, through and including September 16, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–26700 Filed 12–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–05–1610–DO–087L]

Notice of Intent To Prepare a Resource Management Plan and Environmental Impact Statement, and a Request for Information for the Scoping Process

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Anchorage Field Office (AFO), Alaska, is initiating a planning effort to prepare the Bay Resource Management Plan (RMP). This planning activity encompasses approximately 3.6 million acres of BLM administered land in the Bristol Bay and Goodnews Bay areas of Alaska. Section 201 and 202 of the Federal Land Policy and Management Act of 1976 (FLPMA: 43 U.S.C. 1711) and the regulations in 43 CFR part 1600 direct this planning effort. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA). As required in 43 CFR 3420.1–2, this notice is also the specific call for coal resource information and identification of areas where there is an interest in future leasing and development of federal coal.

DATES: The scoping comment period will commence with the publication of this notice and will end 90 days after publication. Meetings and comment deadlines will be announced through the local news media, newsletters and a Web site. Comments on issues and planning criteria should be received on or before the end of the scoping period at the address listed below.

ADDRESSES: Written comments should be sent to the Bay Planning Team, BLM–AFO, 6881 Abbott Loop Road, Anchorage, Alaska 99507; or via fax (907) 267–1267. Documents pertinent to this proposal may be examined at the Anchorage Field Office located in Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain further information or request to be placed on the mailing list for the Bay Resource Management Plan (RMP) planning effort by contacting Pat McClenahan, RMP Team Leader, (907) 267–1484, or June Bailey, Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, (907) 267–1205. The toll-free telephone number is 1–800–478–1263.

SUPPLEMENTARY INFORMATION: The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This public process will take into account local, regional, and national needs and concerns. This notice initiates the public scoping process to identify planning issues and to develop planning criteria.

After gathering public comments on the issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;

2. Issues resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping process.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in lands and realty, wildlife, subsistence, fisheries, vegetation, outdoor recreation, fire management, minerals and geology, forestry, archaeology, paleontology, hydrology, soil, sociology and economics. The planning area includes lands adjacent to Bristol Bay and Goodnews Bay on the west side of the Aleutian Range, and extends southward on the Alaska Peninsula to Big Creek, south of South Naknek. Within this area there are approximately 3.6 million acres (surface estate) of BLM-administered lands occurring primarily as blocks of land, with some small scattered tracts. Approximately 979,171 acres have been selected by Native Corporations, and 914,933 acres have been selected by the State of Alaska, but have not been conveyed.

Preliminary issues and management concerns have been identified by BLM and other agencies, and in prior meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. Some concerns that will be addressed in the planning effort include the management of subsistence; oil and gas; access; locatable minerals; D1 and D2 lands; and Wild and Scenic Rivers.

Public Participation: Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, public meetings will be scheduled in a number of communities within the planning area. Early participation by all of those interested is encouraged and will help determine the future management of lands within the Bay planning area. At least 15 days public notice will be given for activities where the public is invited to attend. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed. Written comments will be accepted throughout the planning process at the address shown above.

Freedom of Information Act Considerations: Public comments submitted for this planning effort, including names and street addresses of respondents, will be available for public review at the Anchorage Field Office during regular business hours (7:30 a.m. to 4 p.m.), Monday through Friday, except holidays. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law.

June Bailey,

Field Office Manager.

[FR Doc. 04–26725 Filed 12–3–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OVW) Docket No. 1414]

Notice of Cancellation of Meeting

AGENCY: Office on Violence Against Women, DOJ.

ACTION: Notice of cancellation of meeting.

SUMMARY: This notice cancels the public meeting of the National Advisory Committee on Violence Against Women scheduled for December 7, 2004, from 8:30 a.m. to 4 p.m.

DATES: The cancelled meeting was scheduled to take place on December 7, 2004, from 8:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jana Sinclair White, The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC, 20531; by telephone at: (202) 353–4343; e-mail: *Jana.S.White@usdoj.gov;* or fax: (202) 307–3911. You may also view the Committee's Web site at: *http://www.ojp.usdoj.gov/vawo/nac/welcome.html.*

Dated: November 30, 2004.

Margaret Davis,

Principal Deputy Director, Office on Violence Against Women.

[FR Doc. 04–26683 Filed 12–3–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Correction

By Notice dated June 28, 2004, and published in the **Federal Register** on July 13, 2004, (69 FR 42067–42068), dated April 29 2004, the listing of controlled substances for Oxycodone (9143) and Hydrocodone (9193), were inadvertently omitted, by Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024.

Dated: November 22, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–26734 Filed 12–3–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under 21 U.S.C. 952 (a)(2)(b) authorizing the importation of such substances, provide manufacturers holding registrations for the bulk manufacture of the substances an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on September 20, 2004, Johnson Matthey Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances:

Drug	Schedule
Phenylacetone (8501)	II
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances as raw materials for use in the manufacture of bulk controlled substances for distribution to its customers.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file written comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections or requests for hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative, Office of Liaison and Policy (ODLR) and must be filed no later than January 5, 2005.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 22, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–26735 Filed 12–3–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 20, 2004, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, Office of Liaison and Policy (ODLR) and must be filed no later than February 4, 2005.

Dated: November 22, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–26736 Filed 12–3–04; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 19, 2004, Organichem, Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Meperidine (9230)	II
Dextropoxyphene (9273)	II

The company plans to manufacture bulk controlled substances for use internally and for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, Office of Liaison and Policy (ODLR) and must be filed no later than February 4, 2005.

Dated: November 22, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–26737 Filed 12–3–04; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 5, 2005. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Permit Application No. 2005–017, Peter Doran Earth and Environmental Sciences (MC186), University of Illinois at Chicago, Chicago, IL 60607.

Activity for Which Permit Is Requested

Take. The applicant plans to collect bone samples from mummified penguins and seals located on the ice surface of the Dry Valley lakes. The radiocarbon dates of the bones may help to determine the age of the lake ice covers.

Location

Taylor Valley Lakes.

Dates

December 1, 2004 to February 15, 2005.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 04–26675 Filed 12–3–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR–71 and DPR–62 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering an application for the renewal of Operating License Nos. DPR–71 and DPR–62, which authorizes the Carolina Power & Light Company, now doing business as Progress Energy Carolinas, Inc. (PEC), to operate Brunswick Steam Electric Plant, at 2,923 megawatts thermal for Unit 1, and 2,923 megawatts thermal for Unit 2. The renewed licenses would authorize the applicant to operate the Brunswick Steam Electric Plant, Units 1 and 2, for an additional 20 years beyond the period specified in the current licenses.

The current operating license for Brunswick Steam Electric Plant, Unit 1 expires on September 8, 2016, and the current operating license for Brunswick Steam Electric Plant, Unit 2 expires on December 27, 2014.

The Commission's staff has received an application dated October 18, 2004, from Carolina Power & Light Company, filed pursuant to 10 CFR Part 54, to renew the Operating License Nos. DPR–71 and DPR–62 for Brunswick Steam Electric Plant, Units 1 and 2, respectively. A Notice of Receipt and Availability of the license renewal application, ''Carolina Power & Light Company; Notice of Receipt of Application for Renewal of Brunswick Steam Electric Plant, Units 1 and 2; Facility Operating License Nos. DPR–71 and DPR–62 for an Additional 20-year Period'' was published in the **Federal Register** on November 18, 2004 (69 FR 67611).

The Commission's staff has determined that Carolina Power & Light Company has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is acceptable for docketing. The current Docket Nos. 50–325 and 50–324 for Operating License Nos. DPR–71 and DPR–62, respectively, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed licenses will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Within 60 days after the date of publication of this **Federal Register** Notice, the requestor/petitioner may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licenses. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, or by e-mail at *pdr@nrc.gov.* If a request for a hearing or a petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the licenses without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups and all like subject-matters shall be grouped together:

1. Technical—primarily concerns issues relating to technical and/or health and safety matters discussed or referenced in the Brunswick Steam Electric Plant, Units 1 and 2, safety analysis for the application (including issues related to emergency planning and physical security to the extent that such matters are discussed or referenced in the application).

[1] To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the license renewal application

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101, verification number is 301–415–1966. A copy of the request for hearing and petition for leave to intervene must also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the applicant. Attorney for the Applicant: Mr. Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LCC, Post Office Box 1551, Raleigh, North Carolina, 27602–1551.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's Web site. Copies of the application to renew the operating licenses for Brunswick Steam Electric Plant, Units 1 and 2, are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, and on the NRC's webpage at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html* while the application is under review. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML043060444. (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC's Web site for updates on the resumption of ADAMS access.) Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The staff has verified that a copy of the license renewal application is also available to local residents near the Brunswick Steam Electric Plant, Units 1 and 2, at the North Carolina University at Wilmington, William Randall Library, 601 South College Road, Wilmington, North Carolina.

Dated at Rockville, Maryland, this 30th day of November, 2004.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–26693 Filed 12–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Firstenergy Nuclear Operating Company; Davis-Besse Nuclear Power Station; Amended Exemption

1.0 Background

The FirstEnergy Nuclear Operating Company (the licensee) is the holder of Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station (DBNPS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Ottawa County, Ohio.

2.0 Request

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.46 provides acceptance criteria for the emergency core cooling systems (ECCS), including an option to develop the ECCS evaluation model in conformance with Appendix K requirements (10 CFR 50.46(a)(1)(ii)). 10 CFR Part 50, Appendix K, Section 1.D.1, in turn, requires that accident evaluations use the combination of ECCS subsystems assumed to be operative ''after the most damaging single failure of ECCS equipment has taken place.''

An exemption issued on May 5, 2000, exempted the licensee from the single-failure requirement for the two systems (paths) for preventing boric acid precipitation (boric acid precipitation control or BPC) during the long-term cooling phase following a loss-of-coolant accident (LOCA). Additionally, the licensee was exempted from the calculation requirements of 50.46(b)(5) and Appendix K, Section I.A.4 for the second or backup path for BPC. The proposed action would amend the existing exemption by approving a new path for BPC. This new path would become the primary path and the original primary path would become the backup path. The original backup path would no longer be credited as part of

the licensing basis, although it would remain as a third option procedurally. As such, the parts of the exemption related to the calculation requirements of 50.46(b)(5) and Appendix K, Section I.A.4 are removed from the exemption as they only applied to the original backup path and are no longer needed.

Specifically, DBNPS requested the following amended exemption: FirstEnergy Nuclear Operating Company, with respect to the Davis-Besse Nuclear Power Station, is exempt from the single-failure criterion requirement of 10 CFR 50, Appendix K, Section I.D.1, with respect to failure of either Motor Control Center E11B or Motor Control Center F11A and the resulting inability to initiate an active means of controlling core boron concentration.

In summary, the licensee has modified the plant to install a better method of post-LOCA BPC and wants to credit the new method for use.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The requirements of 10 CFR Part 50 apply to the DBNPS request to amend the existing exemption. The underlying purpose of the single-failure criterion requirement is to assure long-term cooling performance of the ECCS in the event of the most damaging single-failure of ECCS equipment.

As a licensing review tool, the single-failure criterion helps assure reliable systems as an element of defense in depth. As a design and analysis tool, it promotes reliability through enforced redundancy. Since historically only those systems or components that were judged to have a credible chance of failure were assumed to fail, the criterion has been applied to such responses as valve movement on demand, emergency diesel generator start, short circuit in an electrical bus, and fluid leakage caused by gross failure of a pump or valve seal during long-term cooling. Certain types of structural elements, when combined with other unlikely events, were not assumed to fail because the probabilities of the resulting scenarios were deemed sufficiently small that they did not need to be considered.

The single-failure criterion was developed without the benefit of numerical failure assessments. Regulatory requirements and guidance consequently were based upon categories of equipment and examples that must be covered or that are exempt, and do not allow a probabilistic consideration during routine implementation. Hence, a single failure that was not judged to be exempt would need to be addressed, whether or not there is a substantial impact upon overall system reliability. A result that does not improve safety is inconsistent with the objective of the single-failure criterion, which was not intended to force changes if essentially no benefit would accrue. This is the case with potential failure of the active means of BPC.

No U.S. plants have encountered LOCA conditions where BPC was of concern. BPC measures are not needed for hot-leg breaks because water will flow through the core, thus preventing significant boric acid buildup. Additionally, BPC measures are not needed if excore thermocouples indicate an adequate subcooling margin because there is no boiling to cause concentration of boric acid. Neither are they needed for many of the remaining pipe breaks until decay heat is low, because water will flow from the core to the upper downcomer via the reactor vessel vent valves, thus providing a mechanism to control accumulation of boric acid in the core. Active means for BPC are needed in case one of the above conditions is not satisfied.

In reviewing the proposed BPC ECCS alignments, the NRC staff used substantial improvement in reliability as its criterion for acceptance, since the existing BPC ECCS alignments were found acceptable on a probabilistic basis.

The licensee submitted information that compared the previously approved BPC alignments with the proposed alignments to show that the proposed BPC ECCS alignments are more reliable than the previously approved alignments.

The new proposed primary path takes suction from the ECCS sump through decay heat pump 1–1 to a newly installed crossover line to the decay heat removal system hot leg drop line and through decay heat system valves DH–11 and DH–12 to the reactor coolant system (RCS) hot leg, and finally to the reactor vessel to back-flush precipitated boron from the core. The NRC staff determined that this is an improvement over the previous primary alignment in that it provides a faster, higher, flushing/diluting flow to the reactor vessel from the RCS hot leg side. For RCS cold leg pipe breaks, this alignment would provide the optimal flow direction for flushing of the core.

The new proposed backup path is the previous primary path through the pressurizer spray line. This continues to be an acceptable path as was determined by the staff's review for the exemption issued on May 5, 2000. Additionally, the new proposed backup path through the pressurizer spray line does not need additional exemptions regarding the calculation requirements of 50.46(b)(5) and Appendix K, Section I.A.4 that the original backup path needed.

The proposed new BPC primary path is significantly more reliable in terms of capacity and timeliness than the previous primary path. As stated above, the proposed new backup path is the previous primary path and does not need two additional exemptions regarding calculation requirements that the original backup path needed. Therefore, the staff concludes that the proposed backup path is significantly better than the original backup path.

Based on its review, the NRC staff has determined that the proposed BPC alignment paths are significantly more reliable than the previously approved paths and, therefore, the staff concludes that they are acceptable.

For the foregoing reasons, the NRC staff has concluded that amending the existing exemption to the requirements of Appendix K, Section I.D.1, and 10 CFR 50.46(a)(1)(ii) with respect to the revised alignment paths for active means of BPC at DBNPS is acceptable. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of the specific regulations is not necessary in order to achieve the underlying purpose of these regulations to assure long term cooling performance of the ECCS.

Additionally, the NRC staff has concluded that the parts of the exemption related to the calculation requirements of 10 CFR 50.46(b)(5) and Appendix K, Section I.A.4 are now withdrawn as they are no longer needed.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the amendment to the exemption is authorized by law, will not

present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants FirstEnergy Nuclear Operating Company an amendment to the exemption from the requirements of 10 CFR 50.46(a)(1)(ii) and 10 CFR Part 50, Appendix K, Section 1.D.1 for Davis-Besse Nuclear Power Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (69 FR 47469).

This exemption is effective upon issuance and shall be implemented within 120 days.

Dated at Rockville, Maryland, this 29th day of November 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–26692 Filed 12–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Interim Staff Guidance Documents for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Wilkins Smith, Project manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–5788; fax number: (301) 415–5370; e-mail: *wrs@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) plans to issue Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing either a license application or a license amendment request for a fuel cycle facility under 10 CFR part 70. The NRC is soliciting public comments on the ISG documents which will be considered in the final versions or subsequent revisions.

II. Summary

The purpose of this notice is to provide the public an opportunity to review and comment on a draft Interim Staff Guidance document for fuel cycle facilities. Interim Staff Guidance-10 provides guidance to NRC staff relative to determining whether the minimum margin of subcriticality (MoS) is sufficient to provide an adequate assurance of subcriticality for safety to demonstrate compliance with the performance requirements of 10 CFR 70.61(d).

III. Further Information

The document related to this action is available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS ascension number for the document related to this notice is ML043290270. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

This document may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions should be directed to the NRC contact listed above by January 5, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Dated at Rockville, Maryland, this 24th day of November 2004.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Chief, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

Draft—Division of Fuel Cycle Safety and Safeguards Interim Staff Guidance—10; Justification for Minimum Margin of Subcriticality for Safety Issue

Technical justification for the selection of the minimum margin of subcriticality (MoS) for safety, as required by 10 CFR 70.61(d)

Introduction

10 CFR 70.61(d) requires, in part, that licensees demonstrate that ''under normal and credible abnormal conditions, all nuclear processes are subcritical, including use of an approved margin of subcriticality for safety.'' To demonstrate subcriticality, licensees perform validation studies in which critical experiments similar to actual or anticipated calculations are chosen and are then used to establish a mathematical criterion for subcriticality for all future calculations. This criterion is expressed in terms of a limit on the maximum value of the calculated k_{eff}, which will be referred to in this ISG as the upper subcritical limit (USL). The USL includes allowances for bias and bias uncertainty as well as an additional margin which will be referred to hereafter as the minimum margin of subcriticality (MoS). This MoS has been variously referred to within the nuclear industry as subcritical margin, arbitrary margin, and administrative margin. The term MoS will be used throughout this ISG for consistency, but these terms are frequently used interchangeably. This MoS is an allowance for any unknown errors in the calculational method that may bias the result of calculations, beyond those accounted for explicitly in the calculation of the bias and bias uncertainty.

There is little guidance in the fuel facility Standard Review Plans (SRPs) as to what constitutes an acceptable MoS. NUREG–1520, Section 5.4.3.4.4, states that the MoS should be pre-approved by the NRC and that the MoS must ''include adequate allowance for uncertainty in the methodology, data, and bias to assure subcriticality.'' However, there is little guidance on how to determine the amount of MoS that is appropriate. Partly due to the historical lack of guidance, there have been significantly different margins of subcriticality approved for different fuel cycle facilities over time. In addition, the different ways of defining the MoS and calculating k_{eff} limits significantly compound the potential for confusion. The MoS can have a significant effect on facility operations (*e.g.*, storage capacity and throughput) and there has therefore been considerable recent interest in decreasing the margins of subcriticality below what has been accepted historically. These two factors—the lack of guidance and the increasing interest in reducing margins of subcriticality—make clarification of what constitutes acceptable justification for the MoS necessary. In general, consistent with a risk-informed approach to regulation, smaller margins of subcriticality require more substantial technical justification.

The purpose of this ISG therefore is to provide guidance on determining whether the MoS is sufficient to provide

an adequate assurance of subcriticality for safety, in accordance with 10 CFR 70.61(d).

Discussion

The neutron multiplication factor of a fissile system (k_{eff}) depends, in general, on many different physical variables. The factors that can affect the calculated value of k_{eff} may be broadly divided into the following categories: (1) Geometric form; (2) material composition; and (3) neutron distribution. The geometric form and material composition of the system determine—together with the underlying nuclear data (*e.g.*, ν, X(E), and the set of cross section data)—the spatial and energy distribution of neutrons in the system (*i.e.*, flux and energy spectrum). An error in the nuclear data or in the modeling of these systems can produce an error in the calculated value of k_{eff}. This difference between the calculated and true value of k_{eff} is referred to as the bias[1]. The bias is defined as the difference between the calculated and true values of k_{eff}, by the following equation: $\beta = k_{calc} - k_{true}$

The bias of a critical experiment may be known with a high degree of confidence because the true (experimental) value is known a priori ($k_{true} \approx 1$). Because both the experimental and the calculational uncertainty are known, there is a determinable uncertainty associated with the bias. The bias for a calculated system other than a critical experiment is not typically known with this same high degree of confidence, because k_{true} is not typically known. The MoS is therefore an allowance for any unknown errors that may affect the calculated value of k_{eff}, beyond those accounted for explicitly in the bias and bias uncertainty. An MoS is needed because the critical experiments chosen will, in general, exhibit somewhat different geometric forms, material compositions, and neutron spectra from those of actual system configurations, and the effect of these differences is difficult to quantify. Bias and bias uncertainty are estimated by calculating the k_{eff} of critical experiments with geometric forms, material compositions, and neutron spectra similar to those of actual or anticipated calculations. However, because of the many factors that can effect the bias, it must be recognized that this is only an estimate of the true bias of the system; it is not possible to guarantee that all sources of error have been accounted for during validation. Thus, use of a smaller MoS requires a greater level of assurance that all sources of uncertainty and bias have been taken into account and that the bias is known with a high degree of accuracy. The MoS should be large compared to known uncertainties in the nuclear data and limitations of the methodology (*e.g.*, modeling approximations, convergence uncertainties). It should be noted that this MoS is only needed when subcritical limits are based on the use of calculational methods, including computer and hand calculations. The MoS is not needed when subcritical limits are based on other methods, such as experiment or published data (*e.g.*, widely accepted handbooks or endorsed industry standards).

Because the nuclear industry has employed widely different terminology regarding validation and margin, it is necessary to define the following terms as used in this ISG. These definitions are for clarity only and are not meant to prescribe any particular terminology.

Bias: The difference between the calculated and true values of k_{eff} for a fissile system or set of systems.

Bias Uncertainty: The calculated uncertainty in the bias as determined by a statistical method.

Margin of subcriticality (MoS): Margin in k_{eff} applied in addition to bias and bias uncertainty to ensure subcriticality (also known as subcritical, arbitrary, or administrative margin). This term is shorthand for ''minimum margin of subcriticality''.

Margin of safety: Margin in one or more system parameters that represents the difference between the value of the parameter at which it is controlled and the value at which the system becomes critical. (This represents an additional margin beyond the MoS.)

Upper Subcritical Limit: The maximum allowable k_{eff} value for a system. Generally, the USL is defined by the equation USL = 1 − bias − bias uncertainty − MoS.

Subcritical Limit: The value of a system parameter at which it is controlled to ensure criticality safety, and at which k_{eff} does not exceed the USL (also known as safety limit).

Operating Limit: The value of a system parameter at which it is administratively controlled to ensure that the system will not exceed the subcritical limit.[2]

If the USL is defined as described above, then the MoS represents the difference between the average calculated k_{eff} (including uncertainties) and the USL, thus:

MoS = (1 − bias − bias uncertainty) − USL.

There are many factors that can affect the code's ability to accurately calculate k_{eff} and that can thus impact the analyst's confidence in the estimation of the bias. Some of these factors are described in detail below.

Benchmark Similarity

Because the bias of calculations is estimated based on critical benchmarks with similar geometric form, material composition, and neutronic behavior to the systems being evaluated, the degree of similarity between benchmarks and actual or anticipated calculations is a key consideration in determining the appropriate MoS. The more closely the benchmarks represent the characteristics of systems being validated, the more confidence exists in the calculated bias and bias uncertainty.

Allowing a comparison of the chosen benchmarks to actual or anticipated calculations requires that both the experiments and the calculations be described in sufficient detail to permit independent verification of results. This may be accomplished by submitting input decks for both benchmarks and calculations, or by providing detailed drawings, tables, or other such data to the NRC to permit a detailed comparison of system parameters.

In evaluating benchmark similarity, some parameters are obviously more significant than others. The parameters that can have the greatest effect on the calculated k_{eff} of the system are those that are most significant. Historically, some parameters have been used as trending parameters because these are the parameters that are expected to have the greatest effect on the bias. They include the moderator-to-fuel ratio (*e.g.*, H/U, H/X, v^m/v^f), isotopic abundance (*e.g.*, ^{235}U, ^{239}Pu, or overall Pu-content), and parameters characterizing the neutron spectrum (*e.g.*, energy of average lethargy causing fission (EALF), or average energy group (AEG)). Other parameters, such as material density or overall geometric shape, are generally considered to be of less importance. Care should be taken that, when basing justification for a reduced MoS on the similarity of benchmarks to actual or anticipated calculations, all important system characteristics that can affect the bias have been taken into consideration. There are several ways to demonstrate that the chosen benchmarks are sufficiently similar to actual or anticipated calculations:

[1] There are many different ways of computing bias as used in calculation of the USL. This may be an average bias, a least-squares fitted bias, a bounding bias, etc., as described in the applicant's methodology.

[2] Not all licensees have a separate subcritical and operating limit. Use of administrative operating limits is optional, because the subcritical limit should conservatively take parametric tolerances into account.

1. NUREG/CR–6698, ''Guide to Validation of Nuclear Criticality Safety Calculational Method,'' Table 2.3, contains a set of screening criteria for determining benchmark applicability. As is stated in the NUREG, these criteria were arrived at by consensus among experienced NCS specialists and may be considered conservative. The NRC staff considers agreement on all screening criteria to be sufficient justification for demonstrating benchmark similarity. However, less conservative (*i.e.*, broader) screening ranges may be used if appropriately justified.

2. Use of an analytical method that systematically quantifies the degree of similarity between benchmarks and design applications, such as Oak Ridge National Laboratory's TSUNAMI code in the SCALE 5 code package.

TSUNAMI calculates a correlation coefficient indicating the degree of similarity between each benchmark and calculation in pair-wise fashion. The appropriate threshold value of the parameter indicating a sufficient degree of similarity is an unresolved issue with the use of this method. However, the NRC staff currently considers a correlation coefficient $c_k \geq 0.95$ to be indicative of a strong degree of similarity. Conversely, a correlation coefficient < 0.90 should not be used as demonstration of benchmark similarity without significant additional justification. These observations are tentative and are based on the staff's observation that benchmarks and calculations having a correlation of at least 95% also appear to be very similar based on a traditional comparison of system parameters. TSUNAMI should not be used as a ''black box,'' but may be used to inform the benchmark selection process, due to the evolving nature of this tool.

3. Sensitivity studies may be employed to demonstrate that the system k_{eff} is highly insensitive to a particular parameter. In such cases, a significant error in the parameter will have a small effect on the system bias. One example is when the number density of certain trace materials can be shown to have a negligible effect on k_{eff}. Another example is when the presence of a strong external absorber has only a slight effect on k^{eff}. In both cases, such a sensitivity study may be used to justify why agreement with regard to a given parameter is not important for demonstrating benchmark similarity.

4. Physical arguments may be used to demonstrate benchmark similarity. For example, the fact that oxygen and fluorine are almost transparent to thermal neutrons (*i.e.*, cross sections are very low) may be used as justification for why the differences in chemical form between UO_2F_2 and UO_2 may be ignored.

A combination of the above methods may also prove helpful in demonstrating benchmark similarity. For example, TSUNAMI may be used to identify the parameters to which k_{eff} is most sensitive, or a sensitivity study may be used to confirm TSUNAMI results or justify screening ranges. Care should be taken to ensure that all parameters which can measurably affect the bias are considered when comparing chosen benchmarks to calculations. For example, comparison should not be based solely on agreement in the ^{235}U fission spectrum if ^{238}U or ^{10}B absorption or ^{1}H scattering have a significant effect on the calculated k_{eff}. A method such as TSUNAMI that considers the complete set of reactions and nuclides present should be used rather than relying on a comparison of only the fission spectra. That all important parameters have been included can be determined based on a study of the k_{eff} sensitivity, as discussed in the next section. It is especially important that all materials present in calculations that can have more than a negligible effect on the bias are included in the chosen benchmarks. In addition, it is necessary that if the parameters associated with calculations are outside the range of the benchmark data, the effect of extrapolating the bias should be taken into account in setting the USL. This should be done by making use of trends in the bias. Both the trend and the uncertainty in the trend should be extrapolated using an established mathematical method.

Some questions that should be asked in evaluating the chosen benchmarks include:

- Are the critical experiments chosen all high-quality benchmarks from reliable (*e.g.*, peer-reviewed and widely-accepted) sources?
- Are the benchmarks chosen taken from independent sources?
- Do the most important benchmark parameters cover the entire range needed for actual or anticipated calculations?
- Is the number of benchmarks sufficient to establish trends in the bias across the entire range? (The number depends on the specific statistical method employed.)
- Are all important parameters that could affect the bias adequately represented in the chosen benchmarks?

System Sensitivity

Sensitivity of the calculated k_{eff} to changes in system parameters is a closely related concept to that of similarity. This is because those parameters to which k_{eff} is most sensitive should weigh more heavily in evaluating benchmark similarity. If k_{eff} is highly sensitive to a given parameter, an error in the parameter could be expected to have a significant impact on the bias. Conversely, if k_{eff} is very insensitive to a given parameter, then an error would be expected to have a negligible impact on the bias. In the latter case, agreement with regard to that parameter is not important to establishing benchmark similarity.

Two major ways to determine the system's k_{eff} sensitivity are:

1. The TSUNAMI code in the SCALE 5 code package can be used to calculate the sensitivity coefficients for each nuclide-reaction pair present in the problem. TSUNAMI calculates both an integral sensitivity coefficient (*i.e.*, summed over all energy groups) and a sensitivity profile as a function of energy group. The sensitivity coefficient is defined as the fractional change in k_{eff} for a 1% change in the nuclear cross section. It must be recognized that TSUNAMI only evaluates the k_{eff} sensitivity to changes in the nuclear data, and not to other parameters that could affect the bias and should be considered.

2. Direct sensitivity calculations can also be used to perturb the system and gauge the resulting effect on k_{eff}. Perturbation of the atomic number densities can also be used to confirm the integral sensitivity coefficients calculated by TSUNAMI (as when there is doubt as to convergence of the adjoint flux).

The relationship between the k_{eff} sensitivity and confidence in the bias is the reason that high-enriched uranium fuel facilities have historically required a greater MoS than low-enriched uranium facilities. High-enriched systems tend to be much more sensitive to changes in the underlying system parameters, and in such systems, the effect of any errors on the bias would be greatly magnified. For this same reason, systems involving weapons-grade plutonium would also be more susceptible to undetected errors than low-assay mixed oxide (*i.e.*, a few percent Pu). The appropriate amount of MoS should therefore be commensurate with the sensitivity of the system to changes in the underlying parameters.

Some questions that should be asked in evaluating the k_{eff} sensitivity include:

- How sensitive is k_{eff} to changes in the underlying nuclear data (*e.g.*, cross sections)?
- How sensitive is k_{eff} to changes in the geometric form and material composition?

• Is the MoS large compared to the expected magnitude of changes in k_{eff} resulting from errors in the underlying system parameters?

Neutron Physics of the System

Another consideration that may affect the appropriate MoS is the extent to which the physical behavior of the system is known. Fissile systems which are known to be subcritical with a high degree of confidence do not require as much MoS as systems where subcriticality is less certain. An example of a system known to be subcritical would be a finished fuel assembly. These systems typically can only be made critical when highly thermalized, and due to extensive analysis and reactor experience, the flooded case is known to be subcritical in isolation. In addition, the thermal neutron cross sections for materials in finished reactor fuel have been measured with an exceptionally high degree of accuracy (as opposed to the unresolved resonance region). Other examples may include systems consisting of very simple geometry or other idealized situations, in which there is strong evidence that the system is subcritical based on comparisons with highly similar systems in published references such as handbooks or standards. In these cases, the amount of MoS needed may be significantly reduced.

An important factor in determining that the neutron physics of the system is well-known is ensuring that the configuration of the system is fixed. For example, a finished fuel assembly is subject to tight quality assurance checks and has a form that is well-characterized and highly stable. A solution or powder process with a complex geometric arrangement would be much more susceptible to having its configuration change to one whose neutron physics is not well-understood. Experience with similar processes may also be credited.

Some questions that should be asked in evaluating the neutron physics of the system include:

• Is the geometric form and material composition of the system rigid and unchanging?

• Is the geometric form and material composition of the system subject to strict quality assurance?

• Are there other reasons besides criticality calculations to conclude that the system will be subcritical (*e.g.*, handbooks, standards, reactor fuel studies)?

• How well-known are the cross sections in the energy range of interest?

Rigor of Validation Methodology

Having a high degree of confidence in the estimated bias and bias uncertainty requires both that there be a sufficient quantity of well-behaved benchmarks and that there be a sufficiently rigorous validation methodology. If either the data or the methodology is not adequate, a high degree of confidence in the results cannot be attained. The validation methodology must also be suitable for the data analyzed. For example, a statistical methodology relying on the data being normally distributed about the mean k_{eff} would not be appropriate to analyze data that are not normally distributed. A linear regression fit to data that has a non-linear bias trend would similarly not be appropriate.

Having a sufficient quantity of well-behaved benchmarks means that: (1) There are enough (applicable) benchmarks to make a statistically meaningful calculation of the bias and bias uncertainty; (2) the benchmarks span the entire range of all important parameters, without gaps requiring extrapolation or wide interpolation; and (3) the benchmarks do not display any apparent anomalies. Most of the statistical methods used rely on the benchmarks being normally distributed. To test for normality, there must be a statistically significant number of benchmarks (which may vary depending on the test employed). If there is insufficient data to verify normality to at least the 95% confidence level, then a non-parametric technique should be used to analyze the data. In addition, the benchmarks should provide a continuum of data across the entire validated range so that any variation in the bias as a function of important system parameters may be observed. Anomalies that may cast doubt on the results of the validation may include the presence of discrete clusters of experiments having a lower calculated k_{eff} than the set of benchmarks as a whole, an excessive fluctuation in k_{eff} values (*e.g.*, having a $X^2/N \gg 1$), or discarding an unusually high number of benchmarks as outliers (*i.e.*, more than 1–2%).

Having a sufficiently rigorous validation methodology means having a methodology that is appropriate for the number and distribution of benchmark experiments, that calculates the bias and bias uncertainty using an established statistical methodology, that accounts for any trends in the bias, and that accounts for all apparent sources of uncertainty in the bias (*e.g.*, the increase in uncertainty due to extrapolating the bias beyond the range covered by the benchmark data).

In addition, confidence that the code's performance is well-understood means the bias should be relatively small (*i.e.*, bias $\lesssim$ 2%), or else the reason for the bias should be known, and no credit must be taken for positive bias. If the absolute value of the bias is very large (especially if the reason for the large bias is unknown), this may indicate that the calculational method is not very accurate, and a larger MoS may be appropriate.

Some questions that should be asked in evaluating the data and the methodology include:

• Is the methodology consistent with the distribution of the data (*e.g.*, normal)?

• Are there enough benchmarks to determine the behavior of the bias across the entire area of applicability?

• Does the assumed functional form of the bias represent a good fit to the benchmark data?

• Are there discrete clusters of benchmarks for which the overall bias appears to be non-conservative (especially consisting of the most applicable benchmarks)?

• Has additional margin been applied to account for extrapolation or wide interpolation?

• Have all apparent bias trends been taken into account?

• Has an excessive number of benchmarks been discarded as statistical outliers?

Performance of an adequate code validation alone is not sufficient justification for any specific MoS. The reason for this is that determination of the bias and bias uncertainty is separate from selection of an appropriate MoS. Therefore, performing an adequate code validation is not alone sufficient demonstration that an appropriate MoS has been chosen.

Margin in System Parameters

The MoS is a reflection of the degree of confidence in the results of the validation analysis; the MoS is a margin in k_{eff} to provide a high degree of assurance that fissile systems calculated to be subcritical are in fact subcritical. However, there are other types of margin that can provide additional assurance of subcriticality; these margins are frequently expressed in terms of the system parameters rather than k_{eff}. It is generally acknowledged that the margin to criticality in system parameters (termed the margin of safety) is a better indication of the inherent safety of the system than margin in k_{eff}. In addition to establishing subcritical limits on controlled system parameters,

licensees frequently establish operating limits to ensure that subcritical limits are not exceeded. The difference between the subcritical limit and the operating limit (if used) of a system parameter represents one type of margin that may be credited in justifying a lower MoS than would be otherwise acceptable. This difference between the subcritical limit and the operating limit should not be confused with the MoS. Confusion often arises, however, because systems in which k_{eff} is highly sensitive to changes in process parameters may require both: (1) A large margin between subcritical and operating limits, and (2) a large MoS. This is because systems in which k_{eff} is highly sensitive to changes in process parameters are highly sensitive to normal process variations and to any potential errors. Both the MoS and the margin between the subcritical and operating limits are thus dependent on the k_{eff} sensitivity of the system.

In addition to the margin between the subcritical and operating limits, there is also usually a significant amount of conservatism in the facility's technical practices with regard to modeling. In criticality calculations, controlled parameters are typically analyzed at their subcritical limits, whereas uncontrolled parameters are analyzed at their worst-case credible condition. In addition, tolerances must be conservatively taken into account. These technical practices generally result in conservatism of at least several percent in k_{eff}. Examples of this conservatism may include assuming optimum concentration in solution processes, neglect of neutron absorbers in structural materials, or requiring at least a 1-inch, tight-fitting reflector around process equipment. The margin due to this conservatism may be credited in justifying a smaller MoS than would otherwise be found acceptable. However, in order to take credit for this as part of the basis for the MoS, it should be demonstrated that the technical practices committed to in the license application will result in a predictable and consistent amount of conservatism in k_{eff}. If this modeling conservatism will not always be present, it should not be used as justification for the MoS.

Some questions that should be asked in evaluating the margin in system parameters include:

- How much margin in k_{eff} is present due to conservatism in the modeling practices?
- Will this margin be present for all normal and credible abnormal condition calculations?

Normal vs. Abnormal Conditions

Historically, several licensees have distinguished between normal and abnormal condition k_{eff} limits, in that they have a higher k_{eff} limit for abnormal conditions. Separate limits for normal and abnormal condition k_{eff} values are permissible but are not required.

There is a certain likelihood associated with the MoS that processes calculated to be subcritical will in fact be critical. A somewhat higher likelihood is permissible for abnormal than for normal condition calculations. This is because the abnormal condition should be at least unlikely to occur, in accordance with the double contingency principle. That is, achieving the abnormal condition requires at least one contingency to have occurred and is likely to be promptly corrected upon detection. In addition, there is often additional conservatism present in the abnormal condition because uncontrolled parameters are analyzed at their worst-case credible conditions.

As stated in NUREG–1718, the fact that abnormal conditions meet the standard of being at least unlikely from the standpoint of the double contingency principle may be used to justify having a lower MoS than would be permissible for normal conditions. In addition, the increased risk associated with the less conservative MoS should be commensurate with and offset by the unlikelihood of achieving the abnormal condition. That is, the likelihood that a process calculated to be subcritical will be critical increases when going from a normal to a higher abnormal condition k_{eff} limit. If the normal condition k_{eff} limit is acceptable, then the abnormal limit will also be acceptable provided this increased likelihood is offset by the unlikelihood of going to the abnormal condition because of the controls that have been established. If a single k_{eff} limit is used (*i.e.*, no credit for unlikelihood of the abnormal condition), then it must be determined to be acceptable to cover both normal and credible abnormal conditions.

Statistical Arguments

Historically, the argument has been used that the MoS can be estimated based on comparing the results of two statistical methods. In the USLSTATS code issued with the SCALE code package there are two methods for calculating the USL: (1) The Confidence Band with Administrative Margin Approach, which calculates USL–1, and (2) the Lower Tolerance Band Approach, which calculates USL–2. The MoS is an input parameter to the Confidence Band Approach but is not included explicitly in the Lower Tolerance Band Approach. Justification that the MoS chosen in the Confidence Band Approach is adequate has been based on a comparison of USL–1 and USL–2 (*i.e.*, the condition that USL–1, including the chosen MoS, is less than USL–2). However, this justification is not sufficient.

The condition that USL–1 < USL–2 is necessary, but not sufficient, to show that an adequate MoS has been selected. These methods are two different statistical treatments of the data, and a comparison between them can only demonstrate whether the MoS is sufficient to bound statistical uncertainties included in the Lower Tolerance Band Approach but not included in the Confidence Band Approach. There may be other statistical or non-statistical errors in the calculation of k_{eff} that are not handled in the statistical treatments. Therefore, the NRC does not consider this an acceptable justification for selection of the MoS.

Regulatory Basis

In addition to complying with paragraphs (b) and (c) of this section, the risk of nuclear criticality accidents must be limited by assuring that under normal and credible abnormal conditions, all nuclear processes are subcritical, including use of an approved margin of subcriticality for safety. [10 CFR 70.61(d)]

Technical Review Guidance

Determination of an adequate MoS is strongly dependent upon the specific processes and conditions at the facility being licensed, which is largely the reason that different facilities have been licensed with different limits. Judgement and experience must be employed in evaluating the adequacy of the proposed MoS. Historically, however, an MoS of 0.05 in k_{eff} has generally been found acceptable for a typical low-enriched fuel fabrication facility. This will generally be the case provided there is a sufficient quantity of well-behaved benchmarks and a sufficiently rigorous validation methodology has been employed. For systems involving high-enriched uranium or plutonium, additional MoS may be appropriate to account for the increased sensitivity of k_{eff} to changes in system parameters. There is no consistent precedent for such facilities, but the amount of increased MoS should be commensurate with the increased k_{eff} sensitivity of these systems. Therefore, an MoS of 0.05 in k_{eff} for low-enriched fuel facilities or an MoS of 0.1 for high-

enriched or plutonium fuel facilities must be justified but will generally be found acceptable, with the caveats discussed above[3].

For facility processes involving unusual materials or new process conditions, the validation should be reviewed in detail to ensure that there are no anomalies associated with unique system characteristics.

In any case, the MoS should not be reduced below a minimum of 0.02.

Reducing the MoS below 0.05 for low-enriched processes or 0.1 for high-enriched or plutonium processes requires substantial additional justification, which may include:

1. An unusually high degree of similarity between the chosen benchmarks and anticipated normal and credible abnormal conditions being validated.

2. Demonstration that the system k_{eff} is highly insensitive to changes in underlying system parameters, such that the worst credible modeling or cross section errors would have a negligible effect on the bias.

3. Demonstration that the system being modeled is known to be subcritical with a high degree of confidence. This requires that there be other strong evidence in addition to the calculations that the system is subcritical (such as comparison with highly similar systems in published references such as handbooks or standards).

4. Demonstration that the validation methodology is exceptionally rigorous, so that any potential sources of error have been accounted for in calculating the USL.

5. Demonstration that there is a dependable and consistent amount of conservatism in k_{eff} due to the conservatism in modeling practices.

In addition, justification of the MoS for abnormal conditions may include:

6. Demonstration that the increased likelihood of a process calculated as subcritical being critical is offset by the unlikelihood of achieving the abnormal condition.

This list is not all-inclusive; other technical justification demonstrating that there is a high degree of confidence in the calculation of k_{eff} may be used.

[3] NUREG–1718, Section 6.4.3.3.4, states that the applicant should submit justification for the MoS, but then states that an MoS of 0.05 is ''generally considered to be acceptable without additional justification when both the bias and its uncertainty are determined to be negligible.'' These statements are inconsistent. The statement about 0.05 being generally acceptable without additional justification is in error and should be removed from the next revision to the SRP.

Recommendation

The guidance in this ISG should supplement the current guidance in the NCS chapters of the fuel facility SRPs (NUREG–1520 and –1718). In addition, NUREG–1718, Section 6.4.3.3.4, should be revised to remove the following sentence: ''A minimum subcritical margin of 0.05 is generally considered to be acceptable without additional justification when both the bias and its uncertainty are determined to be negligible.''

References

NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility''

NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility''

NUREG/CR–6698, ''Guide for Validation of Nuclear Criticality Safety Calculational Methodology''

NUREG/CR–6361, ''Criticality Benchmark Guide for Light-Water-Reactor Fuel in Transportation and Storage Packages''

Approved: _____

Date: _____

Director, FCSS

[FR Doc. 04–26688 Filed 12–3–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Form DPRS–2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. DPRS–2809, Request to Change Federal Employees Health Benefits (FEHB) Enrollment or to Receive Plan Brochures, is used by former spouses, Temporary Continuation of Coverage enrollees, and direct pay annuitants to change health benefits enrollment or request plan brochures for plans they wish to consider for enrollment during open season.

Approximately 27,000 DPRS–2809 forms are completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden is 20,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ellen Korchek, CEBS, Chief, Program Planning & Evaluation Group, Insurances Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415–3650

and

Joseph F. Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–26729 Filed 12–3–04; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 50747]

Securities Exchange Act of 1934; Order Delaying Pilot Period for Suspension of the Operation of Short Sale Price Provisions

November 29, 2004.

On July 28, 2004, we issued an order (''Pilot Order'') establishing a one year Pilot (''Pilot'') suspending the provisions of Rule 10a-1(a) under the Securities Exchange Act of 1934 (the ''Act'')[1] and any short sale price test of any exchange or national securities association for short sales[2] of certain securities.[3] The Pilot Order provided

[1] 17 CFR 240.10a–1.

[2] ''Short sale'' is defined in Rule 200 of Regulation SHO, 17 CFR 242.200.

[3] Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004). Specifically, the Pilot Order suspended price tests for the following: (1) Short sales in the securities identified in Appendix A to the Pilot Order; (2) short sales in the securities included in the Russell 1000 index effected between 4:15 p.m. EST and the open of the effective transaction reporting plan of the Consolidated Tape Association (''consolidated

that the Pilot would commence on January 3, 2005 and terminate on December 31, 2005, and that we may issue further orders affecting the operation of the Pilot Order.[4] In response to information that we have received from market participants, we are issuing this Order (''Second Pilot Order'') to reset the Pilot to commence on May 2, 2005 and end on April 28, 2006. All other terms of the Pilot Order remain unchanged. We may issue further orders affecting the operation of the Pilot. We find that the delay of the commencement of the Pilot is necessary and appropriate in the public interest and consistent with the protection of investors.[5]

I. New Pilot Period

We established the Pilot as part of our review of short sale regulation in conjunction with the adoption of Regulation SHO.[6] The Pilot is designed to assist us in assessing whether changes to short sale regulation are necessary in light of current market practices and the purposes underlying short sale regulation.[7] In order to achieve this goal, it is critical that the data we receive on short sales of Pilot securities during the term of the Pilot is accurate and comprehensive. This is possible only if market participants execute all short sales of Pilot stocks without regard to any short sale price test.

Pursuant to Regulation SHO, brokers and dealers are required to mark short sale orders of Pilot stocks effected during any Pilot period as ''short exempt'' so that such orders are not subject to price tests.[8] Since the adoption of Regulation SHO and the order establishing the Pilot, our staff has communicated extensively with self-regulatory organizations and brokers and dealers in order to facilitate the implementation of Regulation SHO and the Pilot. During the course of this process, our staff was informed that a large number of brokers and dealers believe it would be inefficient and very costly for them to comply with this marking requirement for Pilot stocks under the time frame established by the Pilot Order. According to these brokers and dealers, they and their customers would need to make significant systems changes to be sure that short sale orders for Pilot stocks are marked properly and that the marking is maintained at each stage of processing the order. They also assert that these systems changes will be more extensive, costly and time-consuming to implement than they had anticipated during the comment period for Regulation SHO.

The order processing systems of brokers and dealers and their customers are predominantly electronic. Currently, many of these systems are not programmed to automatically identify and mark Pilot stocks as ''short exempt'' or to recognize a ''short exempt'' marking. A broker-dealer may have many different internal systems that are linked together, and each of its customers may have different systems through which the customer communicates orders to the broker-dealer. According to the market participants, modifying these systems and their interconnections presents significant programming challenges.

For example, market participants state that these systems currently are not equipped to change orders marked ''short'' to ''short exempt.'' Broker-dealer firms have advised our staff that it will be difficult to implement systems changes under the time frame established by the Pilot Order to identify and change all orders marked short so that all short sales of Pilot stocks are processed as intended by Regulation SHO and the Pilot, *i.e.,* without regard to any short sale price test.

Finally, broker-dealer firms have asked us to consider the possibility that the systems changes may be in effect only for the one-year duration of the Pilot. Even if the brokers and dealers and their customers were able to make the necessary systems changes with reasonable expenditure of time and money, at the conclusion of the Pilot, brokers and dealers and their customers may be required to change their systems again, which would result in additional costs.

In this context, we have been informed that a number of market centers have offered to assist their broker-dealer members in executing short sales in Pilot stocks in a manner consistent with Regulation SHO. According to these market centers, they would process all short sale orders of Pilot stocks without any short sale price test, regardless of whether the broker-dealers had marked the orders as ''short exempt.'' The market centers would do this by ''masking'' short sale instructions on Pilot stocks and executing the short sales as ''short exempt.'' Therefore, brokers and dealers and their customers would not be required to make extensive, and possibly temporary, systems changes, and short sales of Pilot stocks would be executed appropriately.

We have been informed that both the brokers and dealers and the market centers agree that the market centers' proposals to ''mask'' short sale orders in Pilot stocks for the duration of the Pilot would be more efficient than having the brokers and dealers and their customers make necessary systems changes. Some market centers, however, would be required to make significant changes to their systems, and we understand that some of the market centers would not be able to complete all the necessary systems changes by January 3, 2005. We have been informed that the market centers would be ready to ''mask'' orders on May 2, 2005.

Based on the forgoing, we believe that it is necessary and appropriate in the public interest and consistent with the protection of investors to delay the commencement of the Pilot until May 2, 2005. For the Commission to fully evaluate the effectiveness of short sale price restrictions, the data must be complete and accurate. The delay will provide an opportunity for systems to be modified in a manner that will help achieve the purposes of the Pilot.[9] Accordingly, the Pilot will now commence on May 2, 2005 and will end on April 28, 2006.

The compliance date for all other provisions of Regulation SHO remains January 3, 2005. This Second Pilot Order does not affect the responsibility of brokers and dealers to comply with the requirements of Regulation SHO, including the order marking requirements.[10] By issuing this Second Pilot Order, we are providing an opportunity for firms to work with the

tape'') on the following day; and (3) short sales in any security not included in paragraphs (1) and (2) effected in the period between the close of the consolidated tape and the open of the consolidated tape on the following day.

[4] 69 FR at 48033.

[5] *See* Section 36 of the Act. In addition, pursuant to Section 3(f) of the Act, we considered the impact of these modifications on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 69 FR at 48032; Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (the ''Adopting Release'').

[7] 69 FR at 48032.

[8] Rule 200(g) of Regulation SHO requires that brokers and dealers mark all sell orders of any equity security as ''long,'' ''short,'' or ''short exempt.'' 17 CFR 242.200(g). The Adopting Release states that short sales of pilot securities effected during any pilot period should be marked ''short exempt.'' 69 FR at 48012.

[9] In addition, resetting the commencement date of the Pilot would allow the market centers to continue implementation of systems to electronically record all short sale orders, including manual orders.

[10] We believe that an exemption from the order marking requirements may be necessary and appropriate to allow broker-dealers to avail themselves of the order ''masking'' process described above for Pilot stocks, if implemented by the market centers. Accordingly, prior to the commencement of the Pilot, we will consider written requests for appropriate relief from the order marking requirements for Pilot stocks.

market centers to develop cost effective means of executing trades of Pilot stocks. Brokers and dealers, however, retain the responsibility to appropriately mark the orders of Pilot stocks upon commencement of the Pilot on May 2, 2005.

II. Conclusion

We find that delaying implementation of the Pilot until May 2, 2005, for the reasons stated above, is necessary and appropriate in the public interest and consistent with the protection of investors.

Accordingly, it is hereby ordered that the suspension of the provisions of Rule 10a–1(a) and any short sale price test of any exchange or national securities association shall commence on May 2, 2005 and shall terminate on April 28, 2006. The Commission from time to time may issue further orders affecting the operation of the Second Pilot Order.

All other provisions of the Pilot Order shall remain in effect.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3469 Filed 12–3–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50755; File No. SR–CBOE–2004–77]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Systematizing of Orders in Connection With the Requirement To Design and Implement a Consolidated Options Audit Trail System (''COATS'')

November 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules relating to the systematizing of orders in connection with the requirement to design and implement a consolidated options audit trail system (''COATS''). The text of the proposed rule change is provided below. Proposed additions are in italics and proposed deletions are in brackets.

* * * * *

CHAPTER VI

Section B: Member Activities on the Floor

[Orders Required to Be in Written Form] *Required Order Information*

Rule 6.24

(a) [Transmitted to the Floor. Each order transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the floor. Each such order must be in legible written form when taken to the post for attempted execution.] *Orders Must Be Systematized. The Exchange has undertaken with the other options exchanges to develop a Consolidated Options Audit Trail System (''COATS''), which when fully developed and implemented, will provide an accurate, time-sequenced record of electronic and other orders, quotations, and transactions in certain option classes listed on the Exchange. Unless otherwise provided, the requirements of this Rule shall commence on January 10, 2005. In connection with the implementation of COATS:*

(1) Except as provided in paragraphs (a)(2) through (a)(4), and (b), of this Rule, each order, cancellation of, or change to an order transmitted to the Exchange must be ''systematized'', in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the floor of the Exchange. An order is systematized if: (i) the order is sent electronically to the Exchange; or (ii) the order that is sent to the Exchange non-electronically (*e.g., telephone orders) is input electronically into the Exchange's systems contemporaneously upon receipt on the Exchange, and prior to representation of the order.*

(2) Market and Marketable Orders. With respect to non-electronic, market and marketable orders sent to the Exchange, the member responsible for systematizing the order shall input into the Exchange's systems at least the following specific information with respect to the order prior to the representation of the order: (i) The option symbol; (ii) the expiration month; (iii) the expiration year; (iv) the strike price; (v) buy or sell; (vi) call or put; (vii) the number of contracts; and (viii) the Clearing Member. Any additional information with respect to the order shall be input into the Exchange's systems contemporaneously upon receipt, which may occur after the representation and execution of the order.

(3) Orders in Certain Index Option Classes. The requirement to systematize orders as set forth in this Rule shall commence on March 28, 2005, in the following option classes: the S&P 500 index option class (SPX), the S&P 100 index option class (OEX), and the European-style S&P 100 index option class (XEO).

(4) In the event of a malfunction or disruption of the Exchange's systems such that a member is unable to systematize an order, the member or member organization shall follow the procedures as described in paragraph (b) of this Rule during the time period that the malfunction or disruption occurs. Upon the cessation of the malfunction or disruption, the member shall immediately resume systematizing orders. In addition, the member shall exert best efforts to input electronically into the Exchange's systems all relevant order information received during the time period when there was a malfunction or disruption of the Exchange's systems as soon as possible, and in any event shall input such data electronically into the Exchange's systems not later than the close of business on the day that the malfunction or disruption ceases. If, following a malfunction or disruption, the Exchange's systems were to become available for the systemization of orders after the close of business, the member would be expected to input electronically into the Exchange's systems all relevant order information received during the malfunction or disruption on the next business day.

(b) With respect to orders received during a malfunction or disruption of the Exchange's systems under paragraph (a)(4) above:

(1) Transmitted to the Floor. Each order transmitted to the Exchange must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the floor and legibly record the terms of the order, in written form.

(2) Cancellations and Changes. Each cancellation of, or change to, an order that has been transmitted to the floor must be recorded legibly in a written form that has been approved by the

Exchange, and the member receiving such cancellation or change must record the time of its receipt on the floor.

(c) Executions. A member transmitting from the floor a report of the execution of an order must record the time at which a report of such execution is received by such member.

[(d) On-floor Market-Maker Orders. Each order transmitted by a Market-Maker while on the floor, including any cancellation of or change to such order, must be recorded legibly in a written form that has been approved by the Exchange, and must be time stamped immediately prior to its transmission.]

* * * Interpretations and Policies:

.01 Any member desiring to use an order form other than those provided by the Exchange must submit such form to the appropriate Floor Procedure Committee and obtain its approval prior to using such form on the Floor. *When approving an order form other than those provided by the Exchange, the appropriate Floor Procedure Committee shall ensure that the form complies with COATS.*

.02 [(a) Without limiting the applicability of the foregoing, the] *The* use of hand signal communications on the floor of the Exchange may be used to initiate an order, to increase or decrease the size of an order, to change an order's limit, to cancel an order, or to activate a market order. [Unless an options class is exempted by the Exchange, any] *Any* initiation, cancellation, or change of an order relayed to a floor broker through the use of hand signals also must be *systematized in accordance with paragraph (a) of this Rule* [relayed to the floor broker in written form, time-stamped, immediately thereafter]. All other rules applicable to order preparation and retention, and reporting duties are applicable to orders [in exempted option classes] *under this Interpretation*, except that the record-keeping obligation lies with the member signaling the order where a hand signal is used. All cancellations and changes of orders held by the [Board Broker or] Order Book Official must be provided in written form *or electronically, and also must be systematized in accordance with paragraph (a) of this Rule*. [(b) Until further notice the following are exempt options classes under this Interpretation: OEX, SPX, NSX, and DJX.]

.03 The appropriate Floor Procedure Committee will from time to time prescribe the form of Telephone and Terminal Order Formats in a Manual and the contents of this Manual are hereby incorporated in these Rules and will have full force and effect as if fully set forth herein. *The Telephone and Terminal Order Formats in the Manual shall comply with the requirements of COATS.*

.04 Accommodation liquidations as described in Rule 6.54 are exempt from the requirements of this Rule. However, the Exchange maintains quotation, order and transaction information for accommodation liquidations in the same format as the COATS data is maintained, and will make such information available to the SEC upon request.

.05 FLEX options, as described in Chapter 24A of the Exchange's rules, are exempt from the requirements of this Rule. However, the Exchange will maintain as part of its audit trail quotation, order and transaction information for FLEX options in a form and manner that is substantially similar to the form and manner as the COATS data is maintained, and will make such information available to the SEC upon request.

.06 Any proprietary system approved by the Exchange on the Exchange's trading floor which receives orders will be considered an Exchange system for purposes of paragraph (a)(1) of this Rule. Any proprietary system approved by the Exchange shall have the functionality to comply with the requirements of COATS.

.07 On-floor Market-Maker Orders. Each order transmitted by a Market-Maker while on the floor, including any cancellation of or change to such order, must be systematized in accordance with the procedures described in Paragraph (a) and (b) of this Rule, as applicable.

Rule 6.73 Responsibilities of Floor Brokers

(a)–(d) No change.

* * * Interpretations and Policies:

.01—.03 No change.

.04 Pursuant to Rule 6.73(a), *and subject to the requirement to systematize orders prior to representation pursuant to Rule 6.24,* a Floor Broker's use of due diligence in handling an order shall include the immediate and continuous representation at the trading station where the option class represented by the order is traded, any of the following types of orders: (1) market orders, (2) limit orders to sell where the specified price is at or below the current offer or, (3) limit orders to buy where the specified price is at or above the current bid.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes this rule change to comply with the requirement to implement COATS. In connection with the filing of this proposed rule change, CBOE is withdrawing SR–CBOE–2003–18, and Amendment Nos. 1 and 2 thereto, which CBOE previously filed to comply with the requirement to implement COATS.[3]

Specifically, CBOE is submitting the proposed change to Rule 6.24 in connection with subparagraph IV.B.e(v) of the Commission's September 11, 2000 Order (''Order''),[4] which requires the options exchanges to design and implement COATS to ''incorporate into the audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on such respondent exchange, beginning with the receipt of an order by such respondent exchange and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order * * *'' (''Phase V'').

In order to assure that all non-electronic orders are incorporated into COATS for Phase V, the proposed rule change proposes to amend CBOE Rule 6.24, which currently requires orders to be in written form. The proposed rule change generally requires that each order, change to an order, or

[3] Amendment No. 1 to SR–CBOE–2003–18 superceded the original filing in its entirety, and was published for comment by the SEC on July 31, 2003. *See* Securities Exchange Act Release No. 48267 (August 1, 2003), 68 FR 47116 (August 8, 2003).

[4] Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. *See* Securities Exchange Act Release No. 43268 (September 11, 2000).

cancellation of an order transmitted to the Exchange must be ''systematized,'' in a format approved by the Exchange, either before it is sent to the Exchange or contemporaneously upon receipt on the floor of the Exchange, and prior to representation of the order.[5] Each order, change to an order, or cancellation of an order may be systematized in one of two ways. If an order, change to an order, or cancellation of an order is sent electronically to the Exchange, it is systematized. Alternatively, if an order, change to an order, or cancellation of an order that is sent to the Exchange non-electronically is input electronically into the Exchange's systems contemporaneously upon receipt on the Exchange, it is systematized.[6] The proposed rule states that this requirement will commence on January 10, 2005.

Although the proposed rule change generally requires that each order be systematized prior to representation, the Exchange believes that it is appropriate and necessary to treat market and marketable orders differently than other orders so that marketable orders may be represented immediately in the marketplace as customers expect and as members representing those orders are obligated to do.[7] Accordingly, with respect to non-electronic market and marketable orders sent to the Exchange, the proposed rule change provides that the member responsible for systematizing the order shall input into the Exchange's systems a number of order terms that are sufficient to distinguish one order from another order that a member may receive at or about the same time to ensure an accurate audit trail. Accordingly, the proposed rule change requires that a member input into the Exchange's systems the following specific information with respect to a market or marketable order prior to the representation of the order: (i) The option symbol; (ii) the expiration month; (iii) the expiration year; (iv) the strike price; (v) buy or sell; (vi) call or put; (vii) the number of contracts; and (viii) the Clearing Member.[8] Any additional information with respect to the order shall be input into the Exchange's systems contemporaneously thereafter, which may occur after the representation and execution of the order.

This requirement for market and marketable orders necessarily requires the member receiving the market or marketable order to balance the requirement to immediately systematize non-electronic orders for audit trail purposes with the member's obligation under CBOE rules,[9] the federal securities laws, and common law agency principles to immediately and continuously represent market and marketable customer orders.[10] Because the requirement to systematize market and marketable orders will affect a member's ability to immediately represent market and marketable customer orders, the Exchange is also proposing to amend Interpretation .04 to CBOE Rule 6.73—*Responsibilities of Floor Brokers*, to make explicit that a broker's responsibility to immediately and continuously represent market and marketable orders is subject to the requirement set forth in this rule change, namely, that each order must be systematized prior to representation.

With respect to non-electronic orders received in the S&P 100 index option class (OEX), the S&P 500 index option class (SPX), and the European-style S&P 100 index option class (XEO), the proposed rule change states that the requirement to systematize orders prior to representation shall commence on March 28, 2005. The Exchange believes that the exception for these option classes is reasonable and appropriate because the manner in which these option classes trade is significantly different than equity option classes and because of the trading environment that exists in these option classes.[11]

Additionally, in proposed new subparagraph (a)(4) of CBOE Rule 6.24, the Exchange proposes that in the event of a malfunction or disruption of the Exchange's systems such that a member is unable to systematize an order, the member or member organization shall follow the procedures as described in paragraph (b) of CBOE Rule 6.24 during the time period that the malfunction or disruption occurs. Upon the cessation of the malfunction or disruption, the member shall immediately resume systematizing orders. In addition, the member shall exert best efforts to input electronically into the Exchange's systems all relevant order information received during the time period when there was a malfunction or disruption of the Exchange's systems as soon as possible, and in any event shall input such data electronically into the Exchange's systems not later than the close of business on the day that the malfunction or disruption ceases.[12]

The proposed rule change also keeps the current Interpretation and Policy .02(a) of CBOE Rule 6.24, which permits the use of hand signal communications on the floor to, among other things, initiate an order, cancel an order or change material terms of an order. However, any initiation, cancellation, or change of an order relayed to a floor broker through the use of hand signals also must be systematized upon receipt in accordance with paragraph (a) of CBOE Rule 6.24. The proposed rule change also deletes paragraph (b) of Interpretation .02, as paragraph (a) of that interpretation is being amended to delete the reference to exempt classes.

The Exchange has added a new Interpretation and Policy .04 to CBOE Rule 6.24, which states that

[5] CBOE notes that the execution or partial execution of an order has been incorporated into COATS in Phase II, and as described in Paragraph II of the formal COATS Plan that the options exchanges previously have provided to the SEC.

[6] The Exchange recognizes the need for effective and proactive surveillance for activities such as trading ahead and front-running. It currently conducts surveillance for such activities and will incorporate a review of order systemization as part of such surveillance. The Exchange also intends to implement supplementary surveillance and examination programs related to the systemization of orders requirement promptly after this requirement is instituted, and which will support, among other things, trading ahead and front-running surveillances.

[7] CBOE Rule 6.73(a) requires that ''[a] floor broker handling an order is to use due diligence to execute the order at the best price or prices available to him.'' Interpretation .04 to Rule 6.73 further clarifies a broker's obligation to exercise due diligence, stating ''Pursuant to Rule 6.73(a), a Floor Broker's use of due diligence in handling an order shall include the immediate and continuous representation, at the trading station where the option class represented by the order is traded, any of the following types of orders: (1) Market orders, (2) limit orders to sell where the specified price is at or below the current offer or, (3) limit orders to buy where the specified price is at or above the current bid.''

[8] The ''Clearing Member'' means the CBOE clearing member firm that is required to be identified for each transaction on the Exchange pursuant to Rule 6.51(d). *See* Rule 1.1(f) defining ''Clearing Member''.

[9] *See* CBOE Rule 6.73.

[10] Following implementation of this rule change on would be sufficient to distinguish one order from another January 10, 2005, the Exchange intends to analyze whether some number of orders terms less than the eight identified above that a member may receive at or about the same time. If the Exchange's analysis supports eliminating the necessity to input some of these order terms prior to representation, the Exchange may propose to amend this requirement, which would be subject to Commission review and approval.

[11] As CBOE has advised the SEC staff, CBOE initially developed its floor broker workstation (''FBW'') to assist its members in complying with their obligations to systematize orders for COATS. However, the FBW was designed specifically for COATS compliance in equity option classes, and not for use in index option classes. Upon being advised in late December 2003 that the requirement to systematize orders also applied to non-equity option classes, the Exchange actively pursued developing an alternative technology to utilize in index option classes.

[12] If, following a malfunction or disruption, the Exchange's systems were to become available for the systemization of orders after the close of business, the member would be expected to input electronically into the Exchange's systems all relevant order information received during the malfunction or disruption on the next business day.

accommodation liquidations as defined in Rule 6.54 are exempted from the systematization requirement. However, the Exchange maintains quotation, order and transaction information for accommodation liquidations in the same format as the COATS data is maintained, and will make such information available to the SEC upon request.

The Exchange also has added a new Interpretation and Policy .05 to CBOE Rule 6.24, which states that FLEX options, as described in Chapter 24A of the Exchange's rules, are exempt from the requirements of this Rule. However, the Exchange will maintain as part of its audit trail quotation, order and transaction information for FLEX options in a form and manner that is substantially similar to the form and manner as the COATS data is maintained, and will make such information available to the SEC upon request.

The proposed rule change also includes a new Interpretation .06 which provides that any proprietary system approved by the Exchange on the Exchange's trading floor that receives orders will be considered an Exchange system for purposes of paragraph (a)(1) of this Rule. Any proprietary system approved by the Exchange shall comply with the requirements of COATS.

Finally, the proposed rule change includes a new Interpretation .07 which provides that each order transmitted by a Market-Maker while on the floor, including any cancellation of or change to such order, must be systematized in accordance with the procedures described in Paragraph (a) and (b) of this Rule, as applicable. Currently paragraph (d) of CBOE Rule 6.24 requires that each order transmitted by a Market-Maker while on the floor, including any cancellation of or change to such order, must be recorded legibly in a written form that has been approved by the Exchange, and must be time stamped immediately prior to its transmission. This new interpretation thus requires that each order transmitted by a Market-Maker while on the floor, including any cancellation of or change to such order, is systematized in accordance with CBOE Rule 6.24.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act [13] in general and furthers the objectives of Section 6(b)(5) [14] in particular in that it should promote just and equitable principles of trade, and protect investors and the public interest. CBOE believes that the proposed rule change will promote just and equitable principles of trade and protect investors and the public interest by electronically enhancing the audit trail for orders by incorporating non-electronic orders into COATS. This enhanced audit trail will permit CBOE to conduct surveillance of the activity on the Exchange and reconstruct markets in a more efficient and effective manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither received nor solicited written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–77 and should be submitted on or before December 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3472 Filed 12–3–04; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78(b)(5).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50748; File No. SR–NASD–2004–153]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Provide a Delta Hedge Exemption From Stock Option Position Limits for OTC Derivatives Dealers Affiliated With NASD Member Firms When Certain Conditions Are Satisfied

November 29, 2004.

On October 12, 2004, the National Association of Securities Dealers, Inc.

(''NASD'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 2860(b) to provide a delta hedging exemption from stock option position limits for OTC Derivatives Dealers affiliated with NASD member firms when certain conditions are satisfied.[3] The Commission published the proposed rule change for comment in the **Federal Register** on October 21, 2004.[4] The Commission received no comments on the proposed rule change.

Under the proposal, a stock option position of an OTC Derivatives Dealer that is delta neutral[5] would be exempt from position limits, provided that, among other things, the NASD member with which the OTC Derivatives Dealer is affiliated has received a written representation from the OTC Derivatives Dealer stating that it is hedging its stock options positions in accordance with its internal risk management control and pricing models approved by the Commission. Any stock options position of an OTC Derivatives Dealer that is not delta neutral would remain subject to position limits.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.[7] In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2004–153) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3467 Filed 12–3–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal relates to options positions of an ''OTC Derivatives Dealer'' as that term is defined in Rule 3b–12 under the Act. *See* 17 CFR 240.3b–12.

[4] Securities Exchange Act Release No. 50539 (October 14, 2004), 69 FR 61884 (October 21, 2004).

[5] The term ''delta neutral'' as defined in the proposed rule change describes a stock options position that has been hedged, in accordance with a Commission-approved pricing model, with a portfolio of instruments relating to the same underlying stock to offset the risk that the value of the options position will change with changes in the price of the stock underlying the options position.

[6] *See* proposed NASD Rule 2860(b)(3)(A)(vii)(b)(3). The Commission notes that NASD Rule 2860(b)(3)(A)(vii) provides for multiple, independent hedge exemptions. Of course, to the extent that a position is used to hedge for the purpose of one exemption from position limit requirements, such as the delta hedge exemption, such position cannot be used to take advantage of another exemption from position limit requirements.

[7] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (adopting rules relating to OTC Derivatives Dealers).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50753; File No. SR–NASD–2004–147]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 To Modify the Bid Price Compliance Periods on the Nasdaq National Market and SmallCap Market and To Require Non-Canadian Foreign Issuers To Satisfy the Bid Price and Market Value of Publicly Held Shares Requirements Applicable to Domestic Issuers for Continued Listing on the SmallCap Market

November 29, 2004.

I. Introduction

On October 1, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the bid price compliance periods on the Nasdaq National Market and the Nasdaq SmallCap Market and to require non-Canadian foreign issuers to satisfy the minimum bid price and market value of publicly held shares requirements applicable to domestic issuers for continued listing on the Nasdaq SmallCap Market. The proposed rule change was published for notice and comment in the **Federal Register** on October 21, 2004.[3] The Commission received no comments on the proposal. On November 24, 2004, Nasdaq filed Amendment No. 1.[4] This order approves the proposed rule change. Simultaneously, the Commission provides notice of filing of Amendment No. 1 and grants accelerated approval of Amendment No. 1.

II. Description of the Proposal

A. Modification of the Bid Price Compliance Periods

Nasdaq rules relating to the minimum bid price requirement were approved on a pilot basis by the Commission in February 2002[5] and modified in March 2003[6] and December 2003.[7] The pilot, which expires on December 31, 2004, provides 180 calendar days for a National Market issuer trading below $1.00 to regain compliance. Upon the expiration of the first 180 calendar days, an issuer able to satisfy all initial listing criteria is eligible for an additional grace period of another 180 calendar days. Thereafter, a National Market issuer may phase down to the SmallCap Market to take advantage of an additional grace period if it meets all SmallCap initial listing criteria except for bid price.[8] If a National Market issuer is not in compliance 45 days before the expiration of its second grace period, Nasdaq would send a warning letter to the issuer and the issuer could request a hearing at that time, if one were desired.

The current pilot also provides 180 calendar days for a SmallCap Market issuer to regain compliance. Upon the expiration of the first 180-day grace period, an issuer satisfying all initial

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50541 (October 14, 2004), 69 FR 61888.

[4] In Amendment No. 1, Nasdaq made a technical correction to the text of NASD Rule 4450(i)(1).

[5] *See* Securities Exchange Act Release No. 45387 (February 4, 2002), 67 FR 6306 (February 11, 2002) (SR–NASD–2002–13).

[6] *See* Securities Exchange Act Release No. 47482 (March 11, 2003), 68 FR 12729 (March 17, 2003) (SR–NASD–2003–34).

[7] *See* Securities Exchange Act Release No. 48991 (December 23, 2003), 68 FR 75677 (December 31, 2003) (SR–NASD–2003–44), amended by Securities Exchange Act Release No. 48991A (February 5, 2004), 69 FR 6707 (February 11, 2004).

[8] *See infra* Section III.

listing criteria for the SmallCap Market is eligible for an additional grace period of 180 days. Thereafter, an issuer can receive a third grace period, up to the time of its next shareholders meeting (but not more than two years from the original notice of deficiency), if the issuer seeks shareholder approval for a reverse stock split at that meeting and implements the reverse stock split promptly afterward.

Having reviewed its experience with the pilot program, Nasdaq proposes to modify the bid price rules and seeks permanent Commission approval of the revised rules. Under the proposal, a National Market issuer would now have 180 days to regain compliance on the National Market, after which it could transfer to the SmallCap Market if it complied with all SmallCap initial inclusion requirements except for bid price.[9] The new rules would provide a SmallCap issuer with an initial 180-calendar-day period to regain compliance. Thereafter, the issuer could receive a second 180-day grace period if it complied with all initial SmallCap inclusion requirements except for bid price. The third grace period under the pilot rules, which allows a SmallCap issuer to remain listed while it seeks shareholder approval of a reverse stock split, would be eliminated. An issuer in a compliance period under the pilot rules at the time the new rules become effective would be able to finish that period, but thereafter could only use grace periods afforded by the new rules.

B. Nasdaq SmallCap Market Continued Listing Requirements for non-Canadian Foreign Issuers

Nasdaq proposes to amend NASD Rule 4320 to require non-Canadian foreign issuers to satisfy the minimum bid price and market value of publicly held shares requirements applicable to domestic issuers for continued listing on the SmallCap Market. Currently no such continued listing requirements apply to SmallCap non-Canadian foreign issuers.[10] To allow these issuers sufficient time to take any necessary action to achieve compliance, Nasdaq proposes that this requirement be effective 18 months after approval by the Commission.

III. Amendment No. 1

In Amendment No. 1 Nasdaq modified the text of NASD Rule 4450(i)(1) to provide that a National Market issuer deemed not in compliance prior to the expiration of the compliance period for bid price may transfer to SmallCap Market if it meets all applicable requirements for initial inclusion on the SmallCap Market. The prior text of the rule referred to requirements for ''continued'' rather than ''initial'' inclusion.

According to Nasdaq, Amendment No. 1 corrects an inconsistency in both the existing and proposed rule concerning the appropriate standard pursuant to which an issuer may transfer between the Nasdaq National Market and the SmallCap Market. This inconsistency first arose following the approval of SR–NASD–2003–44.[11] In SR–NASD–2003–44, Nasdaq proposed that a SmallCap issuer must meet all initial inclusion requirements for the SmallCap Market to be eligible for an additional compliance period.[12] As such, an issuer that transferred from the National Market would not be eligible for an additional compliance period on the SmallCap Market unless it met all SmallCap initial inclusion standards.

In addition, NASD Rules 4310(c)(8)(D) and 4320(e)(2)(E)(ii) would permit an issuer to qualify for a second 180-day compliance period on the SmallCap Market only if that issuer met all criteria for initial inclusion (except for the bid price requirement) on the SmallCap Market. Thus, even if an issuer were permitted to transfer to the SmallCap Market based on the continued inclusion criteria at the end of its compliance period on the National Market, the issuer would be subject to immediate delisting because it would be ineligible for any additional compliance periods with respect to its bid price deficiency.

The text of NASD Rule 4450(i)(1) as Nasdaq is proposing to amend it is below. New text is in italics and deletions are in brackets.

If a National Market issuer has not been deemed in compliance prior to the expiration of [a] *the* compliance period for bid price *provided in Rule 4450(e)(2),* it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for [continued] *initial* inclusion on the SmallCap Market set forth in Rule 4310(c) [(other than the minimum bid price requirement of Rule 4310(c)(4))] or Rule 4320(e), as applicable*, other than the minimum bid price requirement.* A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[13] In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act,[14] which requires that an association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and, in general, protect investors and the public interest.

The Commission believes that a 180-day grace period for bid price compliance on the Nasdaq National Market and a 360-day grace compliance period on the SmallCap Market will allow a reasonable period for issuers to regain compliance with the bid price rules before being subject to delisting. These time frames are generally consistent with bid price compliance periods available on other markets that have been approved by the Commission.[15] The Commission also believes that requiring non-Canadian foreign issuers to satisfy the same continued listing standards for minimum bid price and market value of publicly held shares applicable to domestic issuers is reasonable and will establish consistent standards applicable to all SmallCap issuers.

The Commission finds good cause for approving proposed Amendment No. 1 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. NASD Rule

[9] *See* NASD Rule 4450(i). *See also infra* Section III.

[10] A rule change to impose such requirements for initial listing by non-Canadian foreign issuers was approved in September 2004. Under this change, all non-Canadian foreign issuers are required to meet the same initial inclusion bid price and market value of publicly held shares requirements as domestic and Canadian issuers. *See* Securities Exchange Act Release No. 50458 (September 28, 2004), 69 FR 59286 (October 4, 2004).

[11] Securities Exchange Act Release No. 48991 (December 23, 2003), 68 FR 75677 (December 31, 2003).

[12] Prior to approval of this rule change, issuers listed on the SmallCap Market (including those that transfer from the Nasdaq National Market) were eligible for an additional compliance period based on meeting only the core initial inclusion requirements contained in NASD Rule 4310(c)(2)(A) and the remaining continued inclusion requirements for the SmallCap Market.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78o–3(b)(6).

[15] *See, e.g.*, NYSE Listed Company Manual, Rule 802.01C (Price Criteria for Capital or Common Stock); Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999) (SR–NYSE–99–29); Securities Exchange Act Release No. 44481 (June 27, 2001), 66 FR 35303 (July 3, 2001) (SR–NYSE–2001–02).

4450(i)(1) currently states that a National Market issuer deemed not in compliance prior to the expiration of the compliance period may transfer to the SmallCap Market if it meets all applicable requirements for continued inclusion on the SmallCap Market. Nasdaq contends that use of the word ''continued'' in Rule 4450(i)(1) is inadvertent and has provided evidence that the rule language instead should have used the word ''initial'' from its inception. The Commission agrees and finds good cause for accelerating approval of Amendment No. 1, thereby allowing the text of NASD Rule 4450(i)(1) to mirror the original intent of the rule without delay.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–147 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–147. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–147 and should be submitted on or before December 27, 2004.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–NASD–2004–147) be, and it hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3473 Filed 12–3–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50742; File No. SR–PCX–2004–101]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Add a $500 Application Fee for Waivers of Exchange Examination Requirements Pursuant to PCX Rule 2.5(c)(4)

November 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 23, 2004, PCX amended the proposed rule change.[3] The PCX has designated this proposal as one changing a fee imposed by the PCX under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its Schedule of Fees and Charges For Exchange Services to add a $500 application fee for waivers of Exchange examination requirements pursuant to PCX Rule 2.5(c)(4). The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX is proposing to implement a non-refundable application fee of $500 when a request to waive an Exchange examination requirement is submitted pursuant to PCX Rule 2.5(c)(4). Since the Commission approved PCX Rule 2.5(c)(4),[6] the Exchange has received a number of requests for waivers of its examination requirements.

When a request is submitted to the Exchange, the Exchange's Shareholder and Registration Services Department (''SRS'') evaluates each application. SRS must independently verify each statement made in the application to ensure that waivers are only granted to those who are properly qualified. Applicants requesting waivers have based their requests on numerous factors including employment history, education, professional licenses held, examinations passed, etc. Depending on the type of justification given and how recently such justification occurred, the amount of time needed to independently verify each individual

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] *See* Securities Exchange Act Release No. 49922 (June 28, 2004), 69 FR 40701 (July 6, 2004)(SR–PCX–2004–51).

justification varies from minutes to hours. Collectively verifying all justifications provided requires SRS to devote significant resources to review and process each application. As such, SRS has been devoting significant resources to these applications and the $500 fee is needed to allow the Exchange to recover costs associated with the processing of these applications.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(4) of the Act [8] in particular, because it provides for the equitable allocation of dues, fees, and other charges among its OTP Holders and other persons using its facilities for the purpose of trading option contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and Rule 19b–4(f)(2) [10] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2004–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–101 and should be submitted on or before December 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3468 Filed 12–3–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50756; File No. SR–PCX–2004–83]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc., Relating to Changing the Opening Time and the Commencement of the Opening Auction

November 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2004, the Pacific Exchange, Inc., (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On November 22, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), is proposing to change the opening time and the commencement of the Opening Auction from 5 a.m. (Pacific time) to 1 a.m. (Pacific time) and modify PCXE Rules 7.34 and 7.35, respectively.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics.* Proposed deletions are in [brackets].

Rule 7—Equities Trading; Trading Sessions

Rule 7.34(a) Sessions. The Archipelago Exchange shall have three trading sessions each day the Corporation is open for business *unless otherwise determined by the Corporation*:

(1) Opening Session. The Opening Session shall begin at *1:00:00* [5:00:00] a.m. (Pacific time) and conclude at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.

(2) Core Trading Session. The Core Trading Session shall begin for each

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superceded the original filing in its entirety.

security at 6:30:00 a.m. (Pacific time) or at the conclusion of the Market Order Auction, whichever comes later, and conclude at 1:00:00 p.m. (Pacific time).

(3) Late Trading Session. The Late Trading Session shall begin following the conclusion of the Core Trading Session and conclude at 5:00:00 p.m. (Pacific time).

Rule 7.34(b)–(c)—No change.

(d) Orders Permitted in Each Session.

(1) During the Opening Session:

(A) Orders eligible for the Display Order Process and for the Working Order Process that have been designated as available for the Opening Session are eligible for entry into and execution on the Archipelago Exchange.

(B) Stop Orders are not eligible for execution during the Opening Session.

(C) Users may enter market and Auction-Only Limit Orders for inclusion in the Market Order Auction. Market orders and Auction-Only Limit Orders are not eligible for execution during the Opening Session, except during the Market Order Auction.

(D) Neither the Directed Order Process nor the Tracking Order Process is available during the Opening Session. For the purposes of the Opening Session, market Directed Orders are included in the Market Order Auction.

(E) NOW Orders are eligible for execution during the Opening Session, provided, however, NOW Orders are not eligible for the Opening Auction or the Market Order Auction.

(F) PNP Orders are eligible for execution during the Opening Session.

(G) Limited Price Orders are eligible for execution during the Opening Session; provided, however, a Timed Order designated for the Opening Session and designated as good from *1:00* [5:00] a.m. (Pacific time) is not eligible for execution during the Opening Auction. Similarly, a Timed Order designated for the Opening Session and designated as good from 6:30 a.m. (Pacific time) is not eligible for execution during the Market Order Auction.

(H) Notwithstanding that the Market Order Auction occurs during the Opening Session, as set forth in Rule 7.34(a)(1), the following orders not designated for the Opening Session shall participate in the Market Order Auction:

(i) Market orders designated for the Core Trading Session and entered prior to the conclusion of the Market Order Auction; and

(ii) Limited Price Orders designated for the Core Trading Session and entered prior to 6:28 a.m. (Pacific time).

(2)–(3)—No change.

Rule 7.34(e)–(f)—No change.

* * * * *

Rule 7.35(a) Order Entry and Cancellation Before Opening Auction

(1) Users may submit any orders to the Archipelago Exchange beginning [at 4:30 a.m. (Pacific time)] *30 minutes prior to the Opening Session*. Any such Limited Price Orders designated for the Opening Session will be queued until *1:00* [5:00] a.m. (Pacific time) at which time they will be eligible to be executed pursuant to paragraph (b) of this Rule. Any such market orders will be queued until the Market Order Auction at which time they will be executed pursuant to paragraph (c) of this Rule.

(2) Only Limited Priced Orders designated for the Opening Session will be eligible for the Opening Auction. However, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from *1:00* [5:00] a.m. (Pacific time), is not eligible for execution during the Opening Auction. Market orders entered before the Opening Auction or during the Opening Session will participate in the Market Order Auction. However, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from 6:30 a.m. (Pacific time), is not eligible for execution during the Market Order Auction. Limited Price Orders, including Timed Orders, designated for the Core Trading Session and not designated for the Opening Session will become eligible for execution at the commencement of the Market Order Auction pursuant to Rule 7.35(c).

(3) Beginning *30 minutes prior to the Opening Session* [at 4:30 a.m. (Pacific time)], and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Opening Auction, and any Imbalance associated therewith, shall be published via electronic means as determined from time to time by the Corporation.

(4) Orders that are eligible for the Opening Auction may not be cancelled *2 minutes prior to the Opening Session* [between 4:58 a.m. (Pacific time) and] *until* the conclusion of the Opening Auction.

(b) Opening Auction.

(1) At *1:00* [5:00] a.m. (Pacific time), Limited Price Orders designated for the Opening Session are matched and executed in the Opening Auction; provided, however, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from *1:00* [5:00] a.m. (Pacific time), is not eligible for execution during the Opening Auction.

(2)–(4)—No change.

Rule 7.35(c)–(f)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation on the Archipelago Exchange (''ArcaEx'') facility, the PCX is proposing to change the opening time from 5 a.m. Pacific time to 1 a.m. Pacific time. This proposal applies to both exchange-listed and over-the-counter (''OTC'') securities. In addition, the Exchange is seeking to change the commencement of the Opening Auction [4] from 5 a.m. Pacific time to 1 a.m. Pacific time. The Exchange believes that opening earlier will increase opportunities for attracting liquidity on the system. Specifically, Users [5] of ArcaEx trading in American Depositary Receipts (''ADRs'') and other foreign issues have expressed interest in using the ArcaEx system at times coinciding with the hours of overseas trading markets.[6]

Currently, PCXE Rule 7.34 states that the Opening Session begins at 5:00:00 a.m. (Pacific time). The Exchange proposes to modify this to 1 a.m. (Pacific time). Furthermore, pursuant to PCXE Rule 7.35, the Opening Auction commences at 5 a.m. (Pacific time). The Exchange also proposes to modify the commencement of the Opening Auction [7] to be consistent with the

[4] *See* PCXE Rule 7.35(b).

[5] *See* PCXE Rule 1.1 (yy).

[6] For example the Deutsche Borse opens at 9 a.m. Central European time. ArcaEx has proposed opening at 1 a.m. Pacific time which is the equivalent to 10 a.m. Central European time. ArcaEx is unable to open consistent with the Deutsche Borse opening time due to limitations on when the OTC SIP is available for quote and trade dissemination.

[7] The Commission staff made a technical correction to Amendment No. 1 of the filing to

Opening Session commencement at 1 a.m. (Pacific time). Furthermore, times associated with disseminating the Opening Auction Imbalance and order cancellation requirements are kept consistent with the existing timeframes relative to the opening time and adjusted in accordance with the proposed 1 a.m. (Pacific time) opening time.

ArcaEx will submit all quotes and trades that are generated in the early session beginning at 1 a.m. (Pacific time) to the consolidated quote and trade system for public dissemination.[8] Accordingly, quotes and trades will be made available to the investing public consistent with the availability of quotes and trades during regular trading hours. In addition, the Exchange will work with foreign markets (*i.e.* those that are trading subject securities during the early time period) to coordinate trading halts. Such coordination will occur in a manner similar to that of trading halts during regular trading hours with domestic markets. Specifically, the Exchange represents that PCX Market Management staff will be on-site starting at 1 a.m. (Pacific time) to monitor trading in ArcaEx to maintain a fair and orderly market and make any necessary rulings. For example, during early trading when unusual quoting activity is noted in the security underlying an ADR, PCX Market Management will contact the foreign market where the underlying is listed to obtain additional information as needed. When a halt has been declared on the primary market due to material news, PCX will also halt trading in the subject security on ArcaEx. If a halt has been declared for another non-regulatory reason (*e.g.* system malfunction or unusual price movement), PCX will use its discretion to determine whether trading should be halted in the subject security on ArcaEx.[9]

PCX is establishing contacts with foreign markets trading during the early time period. Several markets have offered to include PCX representatives on distribution lists in order to proactively contact PCX during instances of trading halts. Also, to the extent another domestic market commences trading during early hours, PCX will coordinate halts with these markets as well. Further, PCX has developed appropriate surveillance for the early session. PCX Market Management staff will be available real-time to monitor quote and trade activity and to make rulings where appropriate. Specifically, PCX Market Management will rely on communications with primary markets and third-party data vendor systems to review and monitor news, quoting activity, and stock trading patterns. To the extent unusual trading activity occurs during the early session prior to the arrival of PCX Regulatory Trading Officials (''RTOs''), PCX Market Management staff will refer such activity to the RTOs for follow-up upon their arrival. PCX Market Management and RTO procedures manuals will be updated to reflect the early open procedures, including PCX Market Management transition of issues to RTOs.

The Exchange believes opening earlier, consistent with trading hours in the overseas markets, will enhance transparency in these securities. Moreover, by providing overseas investors with the ability to trade in a U.S. based market, the proposal will provide additional trading opportunities for foreign investors interested in participating in U.S. markets during overseas business hours. Such opportunities should enable enhanced order interaction, foster price competition, promote a more efficient and effective market operation, and enhance the investment choices available to investors.

In Amendment No. 1, the Exchange represented that PCX Market Management staff will be on-site starting at 1 a.m. (Pacific time) to monitor trading in ArcaEx to maintain a fair and orderly market and make any necessary rulings. To the extent unusual trading activity occurs during the early session prior to the arrival of PCX RTOs, PCX Market Management staff will refer such activity to the RTOs for follow-up upon their arrival. PCX Market Management and RTO procedures manuals will be updated to reflect the Early Open procedures, including PCX Market Management transition of issues to RTOs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

signify that the Exchange intended to refer to the ''Opening Auction.'' Telephone conversation between Mai Shiver, Director, Regulatory Policy, PCX and Tim Fox, Attorney, Division of Market Regulation, Commission, on November 26, 2004.

[8] The Securities Information Processor in exchange-listed securities that is responsible for consolidation and dissemination of all exchange-listed quotes and trades is the Securities Industry Automation Corporation (''SIAC'') and for dissemination of Nasdaq-listed quotes and trades is Nasdaq. ArcaEx has agreed with SIAC and Nasdaq that each of the respective Securities Information Processors will open the tape at 1 a.m. (Pacific time). In addition, ArcaEx has notified the Operating Committee of the Consolidated Tape Association (''CTA'') and Consolidated Quote (''CQ'') Plans and the OTC/UTP Committee of its agreement with the Processors to open the tapes early. ArcaEx will not begin trading at 1 a.m. (Pacific time) until the Securities Information Processors are ready to accommodate quoting and trading at that time and have provided ArcaEx with notification that they are prepared to disseminate quotes and trades at that time.

[9] *See* PCXE Rule 7.13 regarding PCX's authority to declare a trading halt.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–83 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–PCX–2004–83 and should be submitted on or before December 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3471 Filed 12–3–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50751; File No. SR–Phlx–2004–59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to Minor Adjustments in the Calculation of the Nasdaq Composite Index®

November 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 2004, the Philadelphia Stock Exchange (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 16, 2004, the Phlx filed Amendment No. 1 to the proposed rule change.[3] On November 16, 2004, the Phlx filed Amendment No. 2 to the proposed rule change.[4] The Phlx filed the proposal under Section 19(b)(3)(A) of the Act,[5] and Rule 19b–4(f)(6) thereunder,[6] which renders the proposal effective upon filing.[7] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to make minor adjustments to the manner by which the Nasdaq Composite Index® (''Index'') is calculated.[8] The Exchange currently lists and trades full-sized option contracts on the Index (''QCX'') and mini-sized option contracts on the Index (''QXE''), which are one-tenth the size of QCX contracts.[9] The Index is a cash-settled, capitalization-weighted, broad-based, A.M.-settled index composed of approximately 3,400 stocks listed and traded on The Nasdaq Stock Market, Inc. (''Nasdaq'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make minor adjustments to the manner by which the Index is calculated because Nasdaq has made certain minor adjustments to the manner of calculating the settlement values of the component securities of the Index.

Nasdaq maintains, compiles, and calculates the Index. The Exchange, for its part, provides and maintains the market for QCX and QCE Index options. The QCX and QCE options on the Index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 changed language in the Purpose section of the proposal to more accurately reflect the changes Nasdaq is making with respect to calculating the settlement values of the component securities of the Index, which the Phlx is proposing to copy. Amendment No. 1 also included an Exhibit that set forth the comments the Phlx received regarding this proposal. Amendment No. 1 replaced the original filing in its entirety.

[4] Amendment No. 2 made a technical correction to the proposed rule change. Amendment No. 2 replaced the proposed rule change, including Amendment No. 1, in its entirety.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 19 CFR 240.19b–4.

[7] The Commission considers the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act to have commenced on November 16, 2004, the date the Phlx filed Amendment No. 2 to the proposal.

[8] Nasdaq®, Nasdaq Composite® and Nasdaq Composite Index® are registered trademarks of The Nasdaq Stock Market, Inc. (which with its affiliates are the ''Corporations'') and are licensed for use by the Phlx. The product(s) described herein have not been passed on by the Corporations as to their legality or suitability. The product(s) are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the product(s).

The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq Composite Index® or any data included therein. The Corporations make no warranty, express or implied, as to results to be obtained by the exchange, owners of the product(s), or any other person or entity from the use of the Nasdaq Composite Index® or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of merchantiability or fitness for a particular purpose or use with respect to the Nasdaq Composite Index or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special, incidental, punitive, indirect, or consequential damages, even if notified of the possibility of such damages.

[9] *See* Securities Exchange Act Release No. 48884 (December 5, 2003), 68 FR 69753 (December 15, 2003) (SR–Phlx–2003–66).

expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 4:15 p.m. (eastern time) on the Thursday immediately prior to expiration. Previously, the exercise settlement value of the Index at option expiration was calculated by Nasdaq based on the volume-weighted opening price (''Nasdaq VWOP'') of the component securities in the first four minutes of trading on the business day prior to expiration, which would normally be a Friday (''A.M. Settlement'').[10]

Under the new calculation, the exercise settlement value of the Index at option expiration will be calculated by Nasdaq based on the Nasdaq VWOP of the component securities in the first five minutes of trading (or period of time that Nasdaq determines)[11] on the business day prior to expiration. Under the new calculation, Nasdaq will independently maintain the trade history of each index component beginning with the receipt of the day's first eligible trade in that issue and continuing for five minutes.[12]

Trade adjustments will be recorded and reflected for each component, under the new calculation, until the five-minute window for the last component stock closes, or 4 p.m. (previously 10:30 a.m.), whichever is sooner. For individual securities, the VWOP value is calculated based on the first five minutes of trading in the Nasdaq market. For Nasdaq indices, such as the Index, the VWOP value is determined by the VWOP and weighting information for each of the component securities. The VWOP messages will be disseminated as the values are calculated between 9:45 a.m. and 4 p.m. (eastern time).[13]

[10] Telephone conversation between Mark Salvacion, Director and Counsel, Phlx, and Angela Muehr, Attorney, Division of Market Regulation (''Division''), Commission, on November 24, 2004 (clarifying the calculation of the exercise settlement value).

[11] If Nasdaq determines to change the period of time for calculating the VWOP from the first five minutes of trading to another period of time, the Exchange will announce the effective date of any future change by way of an Exchange memorandum to the membership within a reasonable time prior to the implementation of such change, but in no event sooner than five business days prior to its implementation. Telephone conversation between Mark Salvacion, Director and Counsel, Phlx, and Terri Evans, Special Counsel, Division, Commission, and Angela Muehr, Attorney, Division, Commission on November 18, 2004.

[12] Previously, the time period was four minutes.

[13] There are certain instances in which the VWOP value will be calculated at a time later than the first five minutes of trading in the Nasdaq market. *See http://www.nasdaqtrader.com/trader/mds/nasdaqfeeds/nidsspec.pdf.* Telephone conversation between Mark Salvacion, Director and Counsel, Phlx, and Terri Evans, Special Counsel, Division, Commission, and Angela Muehr, Attorney, Division, Commission, on November 18, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest, by establishing a more accurate calculation of the Index. The Exchange believes that adjusting the calculation of the Index should not raise manipulation concerns and should not cause adverse market impact, because the Exchange will continue to employ its current surveillance procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange received several comments in the form of electronic mail from Nasdaq on the proposed rule change. Nasdaq's comments were limited to, on the one hand, specific line edits on Section 3.a of the proposed rule change, and, on the other hand, comments with respect to the timing of the implementation of the adjustment to the VWOP calculation and the filing of the proposed rule change by the Exchange. These comments are available at the Phlx and at the Commission.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17] Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[18]

The Exchange has requested that the Commission waive the 30-day operative delay specified in Rule 19b–4(f)(6). The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[19] The Exchange will be able, without delay, to conform the manner in which the Index is calculated to the adjustments made by Nasdaq for calculating the settlement values of the component securities of the Index. For these reasons, the Commission designates the proposal operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov. Please include File Number SR–Phlx–2004–59 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–*Phlx–2004–59.* This file number should be included on the

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] Rule 19b–4(f)(6) under the Act also requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Phlx complied with this requirement.

[19] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of this filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–59 and should be submitted on or before December 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3466 Filed 12–3–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50752; File No. SR–Phlx–2004–71]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Extension Through April 30, 2005, of a Pilot Program To Disengage the Automatic Execution Feature (AUTO–X) of the Exchange's Automated Options Market (AUTOM)

November 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 3, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On November 24, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and granting accelerated approval to the proposal to extend the pilot period through April 30, 2005.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, through April 30, 2005, its pilot program concerning AUTO–X, whereby AUTO–X is disengaged for a period of 30 seconds after the number of contracts automatically executed in a given class of non-Streaming Quote Options,[4] meets the specified disengagement size for the option (the ''pilot''). The pilot expires November 30, 2004.

The text of amended Exchange Rule 1080 is set forth below. Brackets indicate deletions; italics indicate additions.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080.

(a)–(b) No change.

(c)(i)–(iii) No change.

(iv) (A)–(H) No change.

(I) respecting non-Streaming Quote Options, when the number of contracts automatically executed within a 15 second period in an option (subject to a Pilot program [until November 30, 2004] *through April 30, 2005*) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually. If the Exchange's disseminated size exceeds the specified disengagement size and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, such an order will be automatically executed up to the disseminated size, followed by an AUTO–X disengagement period of 30 seconds. If the specialist revises the quotation in such an option prior to the expiration of such 30-second period, eligible orders in such an option shall again be executed automatically.

The Exchange's systems are designed and programmed to identify the conditions that cause inbound orders to be ineligible for automatic execution. Once it is established that inbound orders are ineligible for automatic execution, Exchange staff has the ability to determine which of the above conditions occurred.

(d)–(k) No change.

Commentary:

No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot through April 30, 2005, which is the date that the Exchange plans to have rolled out all options in the Exchange's electronic options trading platform, Phlx XL.[5] When that roll out is complete there will no longer be any need to continue this pilot program because pursuant to Phlx Rule 1082, with respect to Streaming Quote Options (''SQO''), if the Exchange's disseminated size in a particular series in a SQO is exhausted, the Exchange shall disseminate the next best available quotation.[6] If no specialist or ''Streaming Quote Trader'' has revised their quotation immediately

[20] 17 CFR 200.30–3(a)(12).

[1] 5 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposes to modify the proposed rule change to correct a typographical error in the proposed rule text.

[4] In a telephone conversation between Richard Rudolph, Director and Counsel, Phlx, and Kim Allen, Attorney, Division of Market Regulation (''Division''), Commission, on November 23, 2004, the Exchange clarified that the pilot applies only to option classes known as non-Streaming Quote Options, defined in Phlx Rule 1014, Commentary .05 as those classes not eligible to be traded by Streaming Quote Traders pursuant to Phlx Rule 1014(b)(ii)(A).

[5] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

[6] Pursuant to a telephone conversation between Richard Rudolph, Director and Counsel, Phlx, and Kim Allen, Attorney, Division, Commission, on November 23, 2004, the Exchange clarified that there will be no non-Streaming Quote Options when the roll out for options in Phlx XL is completed.

following the exhaustion of the Exchange's disseminated size, the Exchange shall automatically disseminate the specialist's most recent disseminated price prior to the time of such exhaustion with a size of one contract.[7]

The pilot was originally approved on a six-month basis for a limited number of eligible options[8] and extended for an additional six-month period.[9] Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.[10] In December 2001, the pilot was extended again for an additional six-month period;[11] and was extended again in May 2002,[12]November 2002,[13] May 2003,[14] and November 2003 (for a one-year period).[15] The instant proposed rule change would extend the pilot through April 30, 2005.

The pilot currently includes the following features:

• Once an automatic execution occurs via AUTO–X in an option, the system begins a ''counting'' program, which counts the number of contracts executed automatically for that option up to a certain size,[16] which such size causes AUTO–X to become disengaged for that option.

• When the number of contracts executed automatically for that option exhausts the specified disengagement size for the specific option within a 15-second time frame, the system ceases to automatically execute for that option, and drops all AUTO–X eligible orders in that option for manual handling by the specialist for a period of 30 seconds to enable the specialist to refresh quotes in that option.

• Upon the expiration of 30 seconds, automatic executions resume, the ''counting'' program is set to zero, and it begins counting the number of contracts executed automatically within a 15 second time frame again, up to the specified disengagement size.

Again, when the number of contracts automatically executed exhausts the specified disengagement size within a 15-second time frame, the system drops all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of 30 seconds. The system then continues to reset the ''counting'' program and drop to manual, etc. If the disseminated size exceeds the specified disengagement size, and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, the order will be automatically executed up to the disseminated size, followed by an AUTO–X disengagement period of 30 seconds. If the specialist revises the quote in such an option prior to the expiration of the 30-second period, AUTO–X will be automatically re-engaged.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is designed to perfect the mechanisms of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by providing automatic executions for eligible orders up to the Exchange's disseminated size, while continuing to enable Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2004–71 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–71 and should be submitted on or before December 27, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

[7] *See* Phlx Rule 1082(a)(ii)(C)(2).

[8] *See* Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR–Phlx–00–96).

[9] *See* Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR–Phlx–2001–56).

[10] *See* Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR–Phlx–2001–79).

[11] *See* Securities Exchange Act Release No. 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR–Phlx–2001–100).

[12] *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR–Phlx–2002–22).

[13] *See* Securities Exchange Act Release No. 46840 (November 15, 2002), 67 FR 70473 (November 22, 2002) (SR–Phlx–2002–59).

[14] *See* Securities Exchange Act Release No. 47955 (May 30, 2003), 68 FR 34458 (June 9, 2003) (SR–Phlx–2003–29).

[15] *See* Securities Exchange Act Release No. 48851 (November 26, 2003), 68 FR 68442 (December 8, 2003) (SR–Phlx–2003–77).

[16] Exchange Rule 1080(c)(iv)(I) provides that, when the number of contracts automatically executed within a 15-second period in an option exceeds the ''specified disengagement size,'' a 30-second period ensues during which subsequent orders are handled manually. The specified disengagement size is determined by the specialist and subject to the approval of the Exchange's Options Committee. The specified disengagement size for each option is listed on the Exchange's Web site.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and to protect investors and the public interest.[20]

The Commission believes that the extension of the pilot should assist specialists in maintaining fair and orderly markets during periods of peak market activity. The Commission believes that an extension of the pilot program through April 30, 2005 should allow the Exchange to continue its efforts to deploy its fully automated Phlx XL system. Moreover, according to the Phlx, no complaints from customers, floor traders, or member firms have been received during the entire period of the pilot program.[21]

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[22] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval to extend the pilot program through April 30, 2005 raises no new issues of regulatory concern and should allow Phlx to continue, without interruption, the existing operation of its AUTO–X system.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Phlx–2004–71) is hereby approved on an accelerated basis, as a pilot, scheduled to expire on April 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3470 Filed 12–3–04; 8:45 am]

BILLING CODE 8010–01–P

[19] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] Telephone conversation between Richard Rudolph, Director and Counsel, Phlx, and Kim Allen, Attorney, Division, Commission, on November 23, 2004.

[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3635]

State of Florida; Amendment #4

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective November 17, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 24, 2004, and continuing through November 17, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 3, 2005 and for economic injury the deadline is June 27, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 29, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–26757 Filed 12–3–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3627]

State of Florida; Amendment #4

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective November 17, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 13, 2004, and continuing through November 17, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 3, 2005 and for economic injury the deadline is June 16, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 29, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–26758 Filed 12–3–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P068]

State of Tennessee Amendment #1

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 22 and November 10, 2004, the above numbered Public Assistance declaration is hereby amended to include Giles and Unicoi Counties in the State of Tennessee as disaster areas due to damages caused by severe storms and flooding occurring on September 16–20, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: November 30, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–26759 Filed 12–3–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Adhesives and Sealants Manufacturing.

SUMMARY: The U. S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Adhesives and Sealants Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses; SBA's Very Small Business Program or awarded through the SBA's 8(a) Business Development Program.

DATES: Comments and sources must be submitted on or before December 17, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 205–7280; or by email at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, SBA's Very Small Business Program or awarded through the SBA's 8(a) Business Development Program provide

the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on November 2, 2004 to waive the Nonmanufacturer Rule for Adhesives and Sealants Manufacturing. In response, SBA is currently processing a request to waive the Nonmanufacturer Rule for Adhesives and Sealants Manufacturing, North American Industry Classification System (NAICS) 325520.

The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Authority: 15 U.S.C. 637(a)(17).

Dated: November 29, 2004.

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–26754 Filed 12–3–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of termination of waiver of the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing.

SUMMARY: The U. S. Small Business Administration (SBA) is terminating the waiver of the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing based on our recent discovery of a small business manufacturer for this class of products. Terminating this waiver will require recipients of contracts set aside for small businesses, service-disabled veteran-owned small businesses, SBA's Very Small Business Program or 8(a) businesses to provide the products of small business manufacturers or process on such contracts.

DATES: This termination of waiver is effective on December 21, 2004.

FOR FURTHER INFORMATI0N CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by Fax at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act)15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, SBA's Very Small Business Program or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule.

The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on September 7, 2004 to waive the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing.

In response, SBA published notices in the **Federal Register** on October 18, 2004 and FedBizOpps on October 14, 2004 of intent to the waiver of the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing. In responses to these notices, SBA discovered the existence of a small business manufacturer of that class of products. Accordingly, based on the available information, SBA has determined that there is a small business manufacturer of this class of products, and is therefore terminating the class waiver of the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing, NAICS 332992.

Authority: 15 U.S.C. 637(a)(17).

Dated: November 29, 2004.

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–26755 Filed 12–3–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Petroleum and Coal Products Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Petroleum and Coal Products Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses; SBA's Very Small Business Program or awarded through the SBA's 8(a) Business Development Program.

DATES: Comments and sources must be submitted on or before December 17, 2004.

FOR FURTHER INFORMATI0N CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 205–7280; or by email at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, SBA's Very Small Business Program or awarded through the SBA's 8(a) Business Development Program provide the product of a small business

manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on November 2, 2004 to waive the Nonmanufacturer Rule for Petroleum and Coal Products Manufacturing.

In response, SBA is currently processing a request to waive the Nonmanufacturer Rule for Petroleum and Coal Products Manufacturing, North American Industry Classification System (NAICS) 324110.

The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Authority: 15 U.S.C. 637(a)(17).

Dated: November 29, 2004.

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–26756 Filed 12–3–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4915]

Foreign Terrorists and Terrorist Organizations; Designation: Jam'at Tawhid al wa'al-Jihad, et al.

Determination pursuant to section 1(b) of Executive Order 13224 relating to the designation of Jam'at al Tawhid wa'al-Jihad, also known as the Monotheism and Jihad Group, also known as the al-Zarqawi Network, also known as al-Tawhid, also known as Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn, also known as the Organization of al-Jihad's Base in Iraq, also known as the Organization of al-Jihad's Base of Operations in Iraq, also known as al-Qaida of Jihad in Iraq, also known as al-Qaida in Iraq, also known as al-Qaida in Mesopotamia, also known as al-Qaida in the Land of the Two Rivers, also known as al-Qaida of the Jihad in the Land of the Two Rivers, also known as al-Qaida of Jihad Organization in the Land of the Two Rivers, also known as al-Qaida Group of Jihad in Iraq, also known as al-Qaida Group of Jihad in the Land of the Two Rivers, also known as the Organization of Jihad's Base in the Country of the Two Rivers, also known as the Organization Base of Jihad/Country of the Two Rivers, also known as the Organization of al-Jihad's Base in the Land of the Two Rivers, also known as the Organization Base of Jihad/Mesopotamia, also known as the Organization of al-Jihad's Base of Operations in the Land of the Two Rivers, also known as Tanzeem qa'idat al Jihad/Bilad al Raafidaini.

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that the designated terrorist organization known as Jam'at al-Tawhid wa'al-Jihad, aka the Monotheism and Jihad Group, aka, the al-Zarqawi Network, also known as al-Tawhid, has amended its name to Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn and all the translations and transliterations of that name listed above. This group continues to commit, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectural the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register.**

Dated: November 30, 2004.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 04–26733 Filed 12–3–04; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed Free Trade Agreement With Oman

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate negotiations on a free trade agreement with Oman, request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate negotiations on a free trade agreement with Oman. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed agreements and to provide advice on how specific goods and services and other matters should be treated under the proposed agreements.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intent to testify, as well as their testimony, by January 5, 2005. A hearing will be held in Washington, DC, on January 14, 2005. Written comments are due by noon, January 25, 2005.

ADDRESSES: *Submissions by electronic mail: FR0510@USTR.EOP.GOV. Submissions by facsimile:* Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (*See* requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions regarding Oman should be directed to Jason Buntin, Director for Western Europe and Middle East Affairs, at (202) 395–3320.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), for

agreements that will be approved and implemented through trade promotion authority (TPA) procedures, the President must provide the Congress with at least 90 days' written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group (COG) regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement.

On November 15, 2004, after consulting with relevant Congressional committees and the COG, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with Oman and identified specific objectives for the negotiations. In addition, the USTR has requested that the ITC provide its advice on probable economic effects no later than February 28, 2005. This notice solicits views from the public on these negotiations and provides information on a hearing that will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration as it continues to develop its negotiating objectives for the proposed agreements, the Chairman of the TPSC invites the written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of Oman, any concession that should be sought by the United States, or any other matter relevant to the proposed agreements. The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreements.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers on articles traded with Oman.

(c) Treatment of specific goods (described by HTSUS numbers) under the proposed agreements, including comments on (1) product-specific import or export interests or barriers, (2) experience with particular measures that should be addressed in the negotiations, and (3) in the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure that imported goods originate from Oman, and appropriate rules of origin for goods entering the United States under the proposed agreements.

(e) Existing sanitary and phytosanitary measures and technical barriers to trade imposed by Oman that should be addressed in the negotiations.

(f) Existing barriers to trade in services between the United States and Oman that should be addressed in the negotiations.

(g) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(h) Relevant investment issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental and labor issues that should be addressed in the negotiations.

Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political, and social objectives of such regulations and the degree to which they discriminate against producers of the other country. At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreements and the scope of the U.S. environmental review of the proposed agreements, and (b) the impact of the proposed agreements on U.S. employment and labor markets.

A hearing will be held on January 14, 2005, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. Persons wishing to testify at the hearing must provide written notification of their intent to testify by January 5, 2005. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraphs) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property, and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, January 25, 2005. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''United States-Oman Free Trade Agreement,'' followed by (as appropriate) ''Notice of Intent to Testify,'' ''Testimony,'' or ''Written Comments.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Spreadsheets submitted as supporting documentation are acceptable as Quattro Pro or Excel. If any document submitted electronically contains business confidential information, the file name of the business confidential version should begin with the characters ''BC–,'' and the file name of the public version should begin with the characters ''P—.'' The ''P—'' or ''BC—'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 04–26676 Filed 12–3–04; 8:45 am]

BILLING CODE 3190–W5–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed Free Trade Agreement With the United Arab Emirates (UAE)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate negotiations on a free trade agreement with the UAE, request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate negotiations on a free trade agreement with the UAE. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed agreement and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intent to testify, as well as their testimony, by January 5, 2005. A hearing will be held in Washington, DC, on January 12, 2005. Written comments are due by noon, January 25, 2005.

ADDRESSES: *Submissions by electronic mail: FR0509@USTR.EOP.GOV. Submissions by facsimile:* Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions regarding the UAE should be directed to Douglas Bell, Director for the Middle East and North Africa, at (202) 395–4620.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), for agreements that will be approved and implemented through trade promotion authority (TPA) procedures, the President must provide the Congress with at least 90 days' written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group (COG) regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement.

On November 15, 2004, after consulting with relevant Congressional committees and the COG, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with the UAE and identified specific objectives for the negotiations. In addition, the USTR has requested that the ITC provide its advice on probable economic effects no later than February 28, 2005. This notice solicits views from the public on these negotiations and provides information on a hearing that will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration as it continues to develop its negotiating objectives for the proposed agreement, the Chairman of the TPSC invites the written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of the UAE, any concession that should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers on articles traded with the UAE.

(c) Treatment of specific goods (described by HTSUS numbers) under the proposed agreement, including comments on

(1) Product-specific import or export interests or barriers,

(2) Experience with particular measures that should be addressed in the negotiations, and

(3) In the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure that imported goods originate from the UAE, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing sanitary and phytosanitary measures and technical barriers to trade imposed by the UAE that should be addressed in the negotiations.

(f) Existing barriers to trade in services between the United States and the UAE that should be addressed in the negotiations.

(g) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(h) Relevant investment issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental and labor issues that should be addressed in the negotiations.

Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political, and social objectives of such regulations and the degree to which they discriminate against producers of the other country. At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

A hearing will be held on January 12, 2005, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. Persons wishing to testify at the hearing must provide written notification of their intent to testify by January 5, 2005. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraphs) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property, and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, January 25, 2005. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''United States-United Arab Emirates Free Trade Agreement,'' followed by (as appropriate) ''Notice of Intent to Testify,'' ''Testimony,'' or ''Written Comments.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Spreadsheets submitted as supporting documentation are acceptable as Quattro Pro or Excel. If any document submitted electronically contains business confidential information, the file name of the business confidential version should begin with the characters ''BC—,'' and the file name of the public version should begin with the characters ''P—.'' The ''P—'' or ''BC—'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 04–26677 Filed 12–3–04; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

United We Ride State Coordination Grants Announcement

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice identifies state agencies selected for United We Ride State Coordination Grants and provides instructions for applying for the grant funds.

EFFECTIVE DATE: State agencies selected for State Coordination Grants may begin application procedures upon receipt of letters from FTA Administrator Jennifer L. Dorn informing them of their selection. Applicants should submit their electronic grant applications to FTA by February 28, 2005. Grant activities should be complete, with all funds drawn down from the grant, by February 28, 2006.

FOR FURTHER INFORMATION CONTACT: Applicants may contact the appropriate FTA Regional Administrator (see Appendix A) for grant-specific issues; or Elizabeth Solomon, 202–366–0242, for general information about the United We Ride State Coordination Grants.

SUPPLEMENTARY INFORMATION: Those states selected for funding were found to meet the objective of the United We Ride initiative which is to implement the President's Executive Order on Human Service Transportation Coordination by breaking down barriers among Federal programs to enhance coordination of human service transportation programs for individuals with disabilities, older adults, and lower income populations who depend on transportation services to access employment, health, and other community services. The purpose of the State Coordination Grants is to increase the overall capacity of states to deliver comprehensive and coordinated human services transportation that meets the needs of transportation-disadvantaged individuals and to increase cross-agency collaboration to facilitate coordination, enhance services, and address redundancies of programs and services. These grants may be used to assist states in conducting a comprehensive state

assessment using the United We Ride Framework for Action; developing a comprehensive state action plan for coordinating human services transportation; or, for those states that already have a comprehensive state action plan, to implement one or more of the elements identified in the Framework for Action.

Grant Selections. The solicitation announcement for the United We Ride state coordination grants called for applications to be submitted by August 23, 2004. FTA received 45 proposals, all of which were evaluated and approved by an interagency team of reviewers. Grants will be made for between $19,000 and $35,000. No local match is required for these grants. Of the applicants, 38 are state DOTs and the remaining seven are various other state agencies. We encourage these other state applicants to partner with the state DOTs for submittal of grant applications.

State	Lead agency	Amount
Alabama	Alabama Department of Senior Services	$35,000
Alaska	Alaska Department of Transportation and Public Facilities	35,000
Arizona	Arizona Department of Transportation	35,000
Arkansas	Arkansas State Highway and Transportation Department	19,000
California	California Department of Transportation	34,027
Colorado	Colorado Department of Transportation	35,000
Connecticut	Connecticut Department of Transportation	35,000
Delaware	Delaware Transit Corporation	35,000
District of Columbia	Washington DC Department of Transportation	35,000
Florida	Florida Commission for the Transportation Disadvantaged	35,000
Georgia	Georgia Department of Transportation	34,750
Idaho	Idaho Department of Transportation	35,000
Illinois	Illinois Department of Transportation	35,000
Iowa	Iowa Department of Transportation	30,000
Kansas	Kansas Department of Transportation	35,000
Kentucky	Kentucky Transportation Cabinet	35,000
Louisiana	Louisiana Department of Transportation and Development	34,984
Maine	Maine Department of Transportation	35,000
Maryland	Maryland Transit Administration	35,000
Massachusetts	Massachusetts Human Service Transportation Office	35,000
Michigan	Michigan Department of Transportation	35,000
Minnesota	Minnesota Department of Transportation	35,000
Mississippi	Mississippi Division of Medicaid	35,000
Missouri	Missouri Department of Transportation	35,000
Montana	Office of the Governor	25,450
Nebraska	Nebraska Department of Roads	35,000
Nevada	Nevada Department of Transportation	30,000
New Hampshire	New Hampshire Department of Transportation	35,000
New Jersey	New Jersey Transit Corporation	35,000
New Mexico	New Mexico State Highway and Transportation Department	35,000
New York	New York Department of Transportation	35,000
North Carolina	North Carolina Department of Health and Human Services	35,000
Ohio	Ohio Department of Transportation	28,700
Oklahoma	Oklahoma Department of Transportation	35,000
Oregon	Oregon Department of Transportation	35,000
Pennsylvania	Pennsylvania Department of Transportation	35,000
South Carolina	South Carolina Department of Transportation	35,000
Tennessee	Tennessee Department of Transportation	35,000
Texas	Texas Department of Transportation	35,000
Utah	Utah Department of Transportation	35,000
Vermont	Vermont Agency of Transportation	35,000
Virgin Islands	Virgin Islands Department of Public Works	35,000
Virginia	Virginia Department of Rail and Public Transportation	35,000
West Virginia	West Virginia Division of Public Transit	35,000
Wisconsin	Wisconsin Bureau of Aging and Long Term Care	29,816

Eligible Costs. Funds may be used to support personnel for planning, training, coordination, and other administrative activities required to enhance coordination among and across agencies within the state. Supplies, small equipment (computers, etc.), and travel are also eligible expenses.

Ineligible Costs. Funds may not be used for provision of transportation services, such as for capital costs for large equipment, *e.g.* vehicles, or operating costs.

Planning Requirements. Because the State Coordination grants are financed with planning and research funds, they are exempt from inclusion in the Metropolitan Transportation Improvement Programs (TIPs) and the State Transportation Improvement Programs (STIPs). However, FTA encourages States to share information on their proposed work activities with affected local officials. In urbanized areas, States are encouraged to coordinate with Metropolitan Planning Organizations (MPOs), including possible reference of their work activities in the Unified Planning Work Program. In non-urbanized areas, States are encouraged to share information on proposed State Coordination Grant activities with local officials through each State's required consultation process with non-metropolitan local officials regarding participation in statewide transportation planning and programming. FTA regards the involvement of local officials as critical

to achieving effective coordination of human services transportation.

Pre-Award Authority. Costs may be incurred for activities in the approved proposal prior to FTA approval. However, in exercising pre-award authority, applicants must comply with all Federal requirements. Failure to do so will render costs ineligible for FTA financial assistance. Applicants must consult the appropriate FTA regional office regarding the eligibility of the project for future FTA funds or the applicability of the conditions and Federal requirements. Pre-award spending authority is provided effective as of November 9, 2004, the date on which letters of project selection were sent to applicants.

Certification and Assurances. In accordance with 49 U.S.C. 5323(n), certifications and assurances have been compiled for the various FTA programs. Before FTA may award a Federal grant, each successful applicant must provide to FTA all certifications and assurances required by Federal laws and regulations applicable to itself and its project. A state providing certifications and assurances on behalf of its prospective subrecipients should obtain sufficient documentation from those subrecipients needed to provide informed certifications and assurances. All of the Federal requirements that apply to State Coordination grant applicants are included in those applicable to all grantees, so Category 1, Required of Each Applicant, is the category that State Coordination Grant applicants will select. If FTA already has the State applicant's signed certifications and assurances for the current fiscal year and it has provided adequate certifications and assurances to qualify for a State Coordination Grant, the State applicant need not submit separate certifications and assurances for assistance. FTA's (FY) 2005 Certifications and Assurances Notice was published in the **Federal Register** on October 26, 2004. A copy of that **Federal Register** notice can be found on the FTA Web site at *http://www.fta.dot.gov/legal/federal_register/2004/12174_16165_ENG_HTML.htm*. The document is also available on the Main Menu of the Transportation Electronic Award and Management (TEAM) Web site. Applicants that need further assistance should contact the appropriate FTA regional office (see Appendix A) for further information.

Applying for Funds. Applicants for State Coordination funds will submit their applications electronically through TEAM, the Web-based FTA electronic system that FTA uses for grant award and management. The content of these grant applications must reflect the approved proposal. This application does not require Department of Labor Certification. Regional Office (Appendix A) staff can advise how specific laws, regulations, **Federal Register** notices, and Executive Orders may be obtained.

Payment Procedures. All FTA payments to grantees are made through the Electronic Clearing House Operation (ECHO) system. New grantees can work with regional staff to obtain an ECHO account number and a password for ECHO access. Grantees may transmit an ECHO drawdown request message to FTA in order to receive funds necessary to meet immediate cash disbursement needs. The ECHO system processes the grantee's message and if no problems are noted by FTA, the amount requested is transmitted to Treasury. Treasury electronically transfers the payment to the grantee's financial institution within 24 hours.

Reporting Requirements. By October 31 each year, the state should submit to FTA a milestone progress report and a financial status report in TEAM for each active grant covering the 12-month period ending September 30 or the period from when the grant was awarded through September 30, and, upon completion of the grant project, submit a final report. These reports are intended to meet at least the minimal program information needs at the regional and national levels. Copies of planning documents or products developed from grant activities, if any, can be submitted as attachments in the TEAM system. Grantees must also submit the Overall State Self-Assessment of the Framework for Action. Grantees can: access this document at *http://www.fta.dot.gov/ccam/framework_states.doc*; copy the Overall State Self-Assessment page near the end of the document; and provide, in text, ratings for each of the six sections. The document can then be saved as a text document and submitted as an attachment in TEAM with an annual or final report.

Data Collection. United We Ride is targeted to simplify access to transportation services, reduce duplication and increase cost efficiencies. Too often, information to measure our progress in coordinating human service transportation and achieving cost and service results is lacking. FTA will be providing guidance to assist grantees with collecting data regarding expenditures, costs and benefits of coordinated transportation services.

Issued on November 30, 2004.

Jennifer L. Dorn,

Administrator.

Appendix A—FTA Regional Offices

Region I

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Richard Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055.

Region II

New Jersey, New York, and Virgin Islands. Letitia Thompson, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170.

Region III

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. Susan Borinsky, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100.

Region IV

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee. Hiram Walker, FTA Regional Administrator, 61 Forsyth Street, SW., Suite 17T50, Atlanta, GA 30303, (404) 562–3500.

Region V

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Joel Ettinger, FTA Regional Administrator, 200 West Adams Street, Suite 2410, Chicago, IL 60606–5232, (312) 353–2789.

Region VI

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550.

Region VII

Iowa, Kansas, Missouri, and Nebraska. Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, (816) 329–3920.

Region VIII

Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Lee Waddleton, FTA Regional Administrator, 12300 West Dakota, Suite 310, Lakewood, CO 80228–2583, (720) 963–3300.

Region IX

American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands. Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1839, (415) 744–3133.

Region X

Alaska, Idaho, Oregon, and Washington. Richard F. Krochalis, FTA Regional Administrator, Jackson Federal Building, 915

Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954.

[FR Doc. 04–26751 Filed 12–3–04; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19737]

Notice of Receipt of Petition for Decision That Nonconforming 2004 Mercedes Benz Type 463 Short Wheel Base (SWB) Gelaendewagen Multipurpose Passenger Vehicles (MPVs) Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2004 Mercedes Benz type 463 SWB Gelaendewagen MPVs are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2004 Mercedes Benz type 463 SWB Gelaendewagen MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 5, 2005.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards may also be granted admission into the United States, even if there is no substantially similar motor vehicle of the same model year originally manufactured for importation into and sale in United States, if the safety features of the vehicle comply with or are capable of being altered to comply with those standards based on destructive test information or other evidence that NHTSA decides is adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 2004 Type 463 SWB Gelaendewagen MPVs are eligible for importation into the United States. J.K. has identified its petition as pertaining to both the Cabriolet and the Three Door versions of these vehicles. J.K. believes that these vehicles can be made to conform to all applicable Federal motor vehicle safety standards (FMVSS).

In its petition, J.K. noted that NHTSA has granted import eligibility to 2001–2003 Mercedes Benz type 463 SWB Gelaendewagen MPVs (VCP–25) that they claim are identical to the 2004 Mercedes Benz type 463 SWB Gelaendewagen MPVs that are the subject of this petition. In their petition for the 2001–2003 vehicles the petitioner stated that over a period of ten years, NHTSA has granted import eligibility to a number of Mercedes Benz Gelaendewagen type 463 vehicles. These include the 1990–1996 SWB version of the vehicle (assigned vehicle eligibility number VCP–14) and the 1996 through 2001 long wheel base (LWB) version of the vehicle (assigned vehicle eligibility numbers VCP–11, 15, 16, 18, and 21). These eligibility decisions were based on petitions submitted by J.K. and another register importer, Europa International, Inc., claiming that the vehicles were capable of being altered to comply with all applicable FMVSS. Because those vehicles were not manufactured for importation into and sale in the United States, and were not certified by their original manufacturer (Daimler Benz), as conforming to all applicable FMVSS, they cannot be categorized as ''substantially similar'' to the 2004 SWB versions for purposes of establishing import eligibility under 49 U.S.C. 30141(a)(1)(A). In addition, while there are some similarities between the SWB and LWB versions, NHTSA has decided that the 2002 through 2005 LWB versions of the vehicle that Mercedes Benz has manufactured for importation into and sale in the United States cannot be categorized as substantially similar to the SWB versions for the purpose of establishing import eligibility under section 30141(a)(1)(A). Therefore, we will construe J.K.'s petition as a petition pursuant to 49 U.S.C. 30141(a)(1)(B).

J.K. submitted information with its petition intended to demonstrate that 2004 Type 463 SWB Gelaendewagen MPVs, as originally manufactured, comply with many applicable FMVSS and are capable of being modified to comply with all other applicable standards to which they were not originally manufactured to conform.

Specifically, the petitioner claims that 2004 Type 463 SWB Gelaendewagen MPVs has safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluid*, 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact, 202 Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and*

Door Retention Components, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and *302 Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being able to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Replacement of the instrument cluster with the U.S.-model component; (b) replacement of the cruise control lever with a U.S.-model component on vehicles that are not so equipped; (c) reprogramming and initialization of the vehicle control system to integrate the new instrument cluster and activate required warning systems.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies or modification of existing taillamps to conform to the standard; (c) installation of U.S.-model sidemarker lights.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's surface.

Standard No. 114 *Theft Protection:* reprogramming of the vehicle control systems to activate the required driver warning.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* reprogramming of the vehicle control systems to meet the requirements of this standard.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* programming of the vehicle control systems to activate the required seat belt warning system. The petitioner states that the vehicles are equipped with driver's and passenger's air bags and knee bolsters, and with combination lap and shoulder belts that are self-tensioning and that release by means of a single red push button at the front and rear outboard seating positions.

Standard No. 225 *Child Restraint Anchorage Systems:* installation of U.S.-model child seat anchorage components.

Standard No. 301 *Fuel System Integrity:* The petitioner states that the vehicles' fuel systems must be modified with U.S.-model parts to meet U.S. Environmental Protection Agency (EPA) OBDII, Spit Back, and enhanced EVAP requirements. The petitioner claims that as modified, these systems will control all fuel leaks in the case of an impact.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm.] It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–26752 Filed 12–3–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 29, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 5, 2005 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0013.

Form Number: FinCEN 104 (Formerly Customs Form 4789).

Type of Review: Revision.

Title: Registration of Money Services Business, 31 CFR 103.41.

Description: Money services businesses file Form 107 to register with the Department of the Treasury pursuant to 31 U.S.C. 5330 and 31 CFR 103.41. The information on the form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 17,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 45 minutes.

Frequency of Response: Other (as required).

Estimated Total Reporting/Recordkeeping Burden: 17,600 hours.

Clearance Officer: Steve Rudzinski, (703) 905–3845, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–26720 Filed 12–3–04; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 29, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750

Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 5, 2005 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0034.

Form Number: POD 315.

Type of Review: Extension.

Title: Depositor's Application to Withdraw Postal Savings.

Description: This form is prepared by the applicant for payment of a Postal Savings Account and is used to identify the depositor and ensure that payment is made to the proper person. POD form was formerly used by the Post Office Department for processing payments when payments of accounts were their responsibility.

Respondents: Individuals or households.

Estimated Number of Respondents: 700.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 350 hours.

Clearance Officer: Jiovannah L. Diggs, (202) 874–7662, Financial Management Service, Administrative Programs Division, Records and Information Management Program, 3700 East West Highway, Room 144, Hyattsville, MD 20782.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–26721 Filed 12–3–04; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 23, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 5, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1753.

Form Number: IRS Form 10574.

Type of Review: Revision.

Title: Community Based Outlet Program.

Description: Form 10574 will be used by companies, businesses and government agencies to indicate their interest in participating in the IRS Community Based Outlet Program. This form will be returned to the CBOP analyst by fax or mail for appropriate action.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 25.

Estimated Burden Hours Respondent: 5 Minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 2 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Christopher Davis,

Treasury PRA Assistant.

[FR Doc. 04–26722 Filed 12–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Deposits and Savings Accounts by Office

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before January 5, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Deposits and Savings Accounts by Office.

OMB Number: 1550–0004.

Form Number: OTS Form 248.

Description: This information collection provides deposit data essential for analysis of the market share of deposits required to evaluate the competitive impact of mergers, acquisitions, and branching applications on which OTS must act.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 833.

Estimated Burden Hours per Response: .5 hours.

Estimated Frequency of Response: Annually.

Estimated Total Burden: 417 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management

and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: November 30, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–26760 Filed 12–3–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Financial Management Policies—Interest Rate Risk

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before January 5, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Financial Management Policies—Interest Rate Risk.

OMB Number: 1550–0094.

Form Number: N/A.

Regulation requirement: 12 CFR 563.176.

Description: This information collection requires that savings associations' management establish policies and procedures for managing interest rate risk. These requirements provide OTS with the information necessary for determining the safety and soundness of the savings association.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 893.

Estimated Burden Hours per Response: 40 hours.

Estimated Frequency of Response: Annually.

Estimated Total Burden: 35,720 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: November 23, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–26761 Filed 12–3–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Minimum Security Devices and Procedures

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before January 5, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Minimum Security Devices and Procedures.

OMB Number: 1550–0062.

Form Number: N/A.

Regulation requirement: 12 CFR Part 568 and Appendix B to Part 570.

Description: The Bank Protection Act and OTS implementing regulations require thrifts to establish security devices and procedures. Written security programs allow OTS to evaluate whether thrifts have adopted policies and procedures to ensure compliance with the law and regulations. The Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Federal Reserve Board have substantially similar regulations.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 893.

Estimated Burden Hours per Response: 2 hours.

Estimated Frequency of Response: Annually.

Estimated Total Burden: 1,786 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: November 30, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–26762 Filed 12–3–04; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Monday,
December 6, 2004

Part II

Department of Energy

Western Area Power Administration

The Central Valley Project, the California-Oregon Transmission Project, the Pacific Alternating Current Intertie, and Information on the Path 15 Transmission Upgrade-Rate Order No. WAPA–115; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

The Central Valley Project, the California-Oregon Transmission Project, the Pacific Alternating Current Intertie, and Information on the Path 15 Transmission Upgrade-Rate Order No. WAPA–115

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–115, which includes Rate Schedules CV–F11, CPP–1, CV–T1, CV–NWT3, COTP–T1, PACI–T1, CV–TPT6, CV–SPR3, CV–SUR3, CV–RFS3, and CV–EID3, placing formula rates for power, transmission, and ancillary services for the Central Valley Project (CVP), transmission service on the California-Oregon Transmission Project (COTP), transmission service on the Pacific Alternating Current Intertie (PACI), and third-party transmission into effect on an interim basis. The Rate Order also provides information on the Western Area Power Administration's (Western) entitlement on the Path 15 Transmission Upgrade. The provisional formula rates will be in effect until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional formula rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of power investment and irrigation aid, within the allowable periods.

DATES: Rate Schedules CV–F11, CPP–1, CV–T1, CV–NWT3, COTP–T1, PACI–T1, CV–TPT6, CV–SPR3, CV–SUR3, CV–RFS3, and CV–EID3 will be placed into effect on January 1, 2005, and will be in effect until the Commission confirms, approves, and places the rate schedules in effect on a final basis through September 30, 2009, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Keselburg, Regional Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4418, or Ms. Debbie Dietz, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4453, e-mail *ddietz@wapa.gov.*

SUPPLEMENTARY INFORMATION: Under Amendment No. 4 to Delegation Order No. 0204–108, the Administrator of Western approved the existing Rate Schedule CV–F10 for CVP firm power, Rate Schedules CV–FT4, CV–NFT4, CV–TPT5, CV–NWT2, COTP–FT2, and COTP–NFT2 for transmission, and Rate Schedules CV–RFS3, CV–EID3, CV–SPR3, and CV–SUR3 for CVP ancillary services on April 14, 2001, (Rate Order No. WAPA–95, April 27, 2001). The Commission confirmed and approved the rate schedules on August 14, 2001, in FERC Docket No. EF01–5011–000. The existing rate schedules are effective from April 1, 2001, through December 31, 2004.

The provisional rates include a new transmission service for the PACI (Rate Schedule PACI–T1). The Rate Order also provides information on Western's entitlement on the Path 15 Transmission Upgrade. Western intends to turn over operational control of Western's entitlement on the Path 15 Transmission Upgrade to the California Independent System Operator (CAISO). As a result, the CAISO tariff and rates will apply to this service.

The existing firm power Rate Schedule CV–F10 is being superseded by Rate Schedule CV–F11. Under Rate Schedule CV–F10, the energy rate is 24.97 per mills/kilowatthour (mills/kWh) and the capacity rate is $3.80 per kilowattmonth (kWmonth). The composite rate is 30.83 mills/kWh. On December 31, 2004, the 1994 Power Marketing Plan expires. The 2004 Power Marketing Plan goes into effect January 1, 2005, and does not offer the same type of power service that is available under the 1994 Power Marketing Plan.

Under the 2004 Power Marketing Plan, each Preference Customer (except First Preference Customers) that has signed a Base Resource contract is a Base Resource Customer and is allocated a percentage of the Base Resource. Base Resource is primarily CVP and Washoe Project power output remaining after meeting project use, First Preference, and other operational requirements.

A First Preference Customer is defined in the 2004 Power Marketing Plan as a Preference Customer and/or a Preference entity (an entity qualified to use, but not using, Preference power) within a county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones project provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

The Base Resource and First Preference power provisional formula rates use percentages to recover the estimated power revenue requirement for January through September 2005 of $30 million, of which $1,110,000 will be recovered from the First Preference Customers and $28,890,000 will be recovered from the Base Resource Customers. These rates also include pass-through language for Host Control Area (HCA) and the Commission or other regulatory body credits or charges.

Under the 2004 Power Marketing Plan, a Customer's load can be met through First Preference, Base Resource, and/or Custom Product Power. Custom Product Power is power that is purchased to meet a Customer's load and may include long- and short-term purchases at various rates. All costs associated with Custom Product Power will be recovered through a formula rate in Rate Schedule CPP–1 that passes through the cost of the purchase to a specific Customer(s).

Rate Schedule CV–T1 supersedes Rate Schedules CV–FT4 and CV–NFT4, and CV–NWT3 supersedes Rate Schedule CV–NWT2. The existing and provisional formula rates for CVP transmission service include the costs for scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service. Provisional formula rates developed for CVP, COTP, and PACI transmission services are consistent with FERC Order No. 888.

The third-party transmission service rate schedule allows Western to pass through any costs it incurs for delivery of Western power over a third party's transmission system. The provisional formula rate for third-party transmission service in Rate Schedule CV–TPT6 is the same as the existing formula rate in CV–TPT5, with the exception of pass-through language for HCA and any Commission or other regulatory body charges or credits.

On January 1, 2005, under the provisional formula rate in Rate Schedule CV–T1, the CVP firm and non-firm transmission rates are the same. A change from the existing to the provisional formula rate is the pass-through of HCA charges or credits. A comparison of the estimated monthly and hourly rates from the provisional formula rate to the existing firm and non-firm rates is shown in the table below.

COMPARISON OF EXISTING AND ESTIMATED RATES FROM THE PROVISIONAL FORMULA RATE CVP TRANSMISSION SERVICE

	Existing rates	Estimated rates from the provisional formula rate (effective 1/1/05)	Percent change
CVP Firm Transmission Rate ($/kWmonth)	$0.57	$1.03	81
CVP Non-Firm Transmission Rate (mills/kWh)	1.00	1.40	40

The provisional formula rate for CVP network integration transmission service (Rate Schedule CV–NWT3) is the same as the existing formula rate for this service with the exception of the pass through of any HCA charges or credits.

On January 1, 2005, under the provisional formula rate in Rate Schedule COTP–T1, the COTP firm and non-firm transmission rates are the same. A change from the existing formula rate to the provisional formula rate is the inclusion of pass-through language for HCA credits or charges. A comparison of the estimated monthly and hourly rates from the provisional formula rate to the existing firm and non-firm rates is provided in the table below.

COMPARISON OF EXISTING AND ESTIMATED RATES FROM THE PROVISIONAL FORMULA RATES COTP TRANSMISSION SERVICE

	Existing rates	Estimated rates from the provisional formula rates (effective 1/1/05)	Percent change
COTP Firm Transmission Rate ($/kWmonth):			
Spring	$0.73	$1.87	156
Summer	$0.53	$1.87	253
Winter	$0.66	$1.88	185
COTP Non-Firm Transmission Rate (mills/kWh):			
Spring	1.00	2.55	155
Summer	0.72	2.54	253
Winter	0.91	2.59	185

PACI transmission service is a new service. Under the provisional formula rate in Rate Schedule PACI–T1, the firm and non-firm transmission rates are the same and include pass-through language for HCA and Commission or other regulatory body charges or credits. Under the provisional formula rate, the estimated monthly rates are $0.45/kWmonth for spring, summer, and winter. The estimated hourly PACI transmission rates are 0.61 mills/kWh for spring and summer and 0.62 mills/kWh for winter.

Western has not developed a separate rate for Western's entitlement on the Path 15 Transmission Upgrade, as Western intends to turn over operational control of Western's entitlement on the Path 15 Transmission Upgrade to the CAISO. The CAISO tariff and rates shall apply to Western's entitlement on the Path 15 Transmission Upgrade. Western has provided information on the treatment of revenue associated with its entitlement on the Path 15 Transmission Upgrade as part of this Rate Order.

Rate Schedules CV–RFS3, CV–EID3, CV–SPR3, and CV–SUR3 supersede Rate Schedules CV–RFS2, CV–EID2, CV–SPR2, and CV–SUR2, respectively. Provisional formula rates developed for the CVP ancillary services contain pass-through language for HCA and Commission or other regulatory body charges or credits. A comparison of existing rates to the estimated rates from the provisional formula rates is shown in the table below.

COMPARISON OF EXISTING AND ESTIMATED RATES FROM THE PROVISIONAL FORMULA RATES CVP ANCILLARY SERVICES

Ancillary service type	Existing rates	Rate from the provisional formula rates	Change
Scheduling and System Control and Dispatch Service.	Included in the appropriate transmission rates	Included in the appropriate transmission rates	N/A.
Reactive Supply and Voltage Control Service.	Included in the appropriate transmission rates	Included in the appropriate transmission rates	N/A.
Spinning Reserve Service	$2.946 per kWmonth	Prices consistent with CAISO market	Varies.
Non-Spinning Reserve Service	$2.491 per kWmonth	Prices consistent with CAISO market	Varies.
Regulation and Frequency Response Service.	$2.496 per kWmonth	$2.57 per kWmonth	3%.

COMPARISON OF EXISTING AND ESTIMATED RATES FROM THE PROVISIONAL FORMULA RATES CVP ANCILLARY SERVICES—Continued

Ancillary service type	Existing rates	Rate from the provisional formula rates	Change
Energy Imbalance Service	Within Limits of Deviation Band: Accumulated deviations are to be corrected or eliminated within 30 days. Any net deviations that are accumulated at the end of the month (positive or negative) are to be exchanged in like hours of energy or charged at the composite rate then in effect for CVP firm power.	Within Limits of Deviation Band: There is no financial charge for deviations (energy) within the bandwidth.	
	Outside Limits of Deviation Band: Positive Deviations (overdelivery)—the greater of no charge, or any additional cost incurred. Negative Deviations (underdelivery)—during on-peak hours the greater of three times the composite rate then in effect for CVP firm power or any additional cost incurred. During off-peak hours the greater of the composite rate then in effect for CVP firm power or any additional cost incurred.	Outside the Limits of the Deviation Band: Positive Deviations (overdelivery)—for any hourly average positive deviation, the amount of deviation outside the bandwidth is lost to the system. Negative Deviations (underdelivery)—for any hourly average negative deviation, the amount of deviation outside the bandwidth is charged at the greater of 150 percent of market price or actual cost.	

This Rate Order also includes a change in the Revenue Adjustment Clause (RAC) for the existing CVP Firm Power Rate (CV–F10) that would allow Western to make lump-sum payments to Customers for their share of the fiscal year (FY) 2004 RAC credit, if applicable. The change also delays calculation of the October through December 2004 RAC until all unmet obligations under existing contracts associated with business that occurred prior to January 1, 2005, are resolved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00A, 10 CFR 903, and 18 CFR 300, I hereby confirm, approve, and place Rate Order No. WAPA–115, the CVP power, CVP ancillary services, CVP, COTP, and PACI transmission service formula rates into effect on an interim basis. The new Rate Schedules CV–F11, CPP–1, CV–T1, CV–TPT6, CV–NWT3, COTP–T1, PACI–T1, CV–RFS3, CV–EID3, CV–SPR3, and CV–SUR3 will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: November 18, 2004.

Kyle E. McSlarrow,

Deputy Secretary.

Order Confirming, Approving, and Placing the Central Valley Project Power Rates, the Central Valley Project, the California-Oregon Transmission Project, and the Pacific Alternating Current Intertie Transmission Rates and the Central Valley Project Ancillary Services Rates Into Effect on an Interim Basis, and Providing Information on the Path 15 Transmission Upgrade

This rate was established in accordance with section 302 of the DOE Organization Act, (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939, (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

1994 Power Marketing Plan: The 1994 CVP Power Marketing Plan (57 FR 45782 and 58 FR 34579).

2004 Power Marketing Plan: The 2004 CVP Power Marketing Plan (64 FR 34417) effective January 1, 2005.

Administrator: The Administrator of the Western Area Power Administration.

Ancillary Services: Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission provider's transmission system in accordance with standard utility practice.

Base Resource: The Central Valley and Washoe Project power output and existing power purchase contracts extending beyond 2004, as determined by Western to be available for marketing, after meeting the requirements of Project Use and First Preference Customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services.

CAISO: The California Independent System Operator is a Commission-regulated, State-chartered, nonprofit corporation, and the control area operator of most of California's transmission grid.

COI: The California-Oregon Intertie consists of three 500-kilovolt lines linking California and Oregon, the California-Oregon Transmission Project, and the Pacific Alternating Current Intertie. The Western

Electricity Coordinating Council establishes the seasonal transfer capability for the California-Oregon Intertie.

COI Rating Seasons: COI rating seasons are: summer, June through October; winter, November through March; and spring, April through May.

COTP: The California-Oregon Transmission Project. A 500-kilovolt transmission project in which Western has part ownership.

CPPA: The Calaveras Public Power Agency is a First Preference Customer located in Calaveras County, California.

CVP: The Central Valley Project is a multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield, California.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment expressed in kilowatts.

Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in dollars per kWmonth.

Commission: The Federal Energy Regulatory Commission.

Component 1: Part of a formula rate which is used to recover the costs for a specific service or product.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body that will be passed on to each appropriate Customer. The Commission or other regulatory body accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the appropriate Customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the applicable formula rate.

Component 3: Any charges or credits from the HCA applied to Western for providing this service that will be passed through directly to the appropriate Customer in the same manner Western is charged or credited, to the extent possible. If the HCA charges or credits cannot be passed through to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the applicable formula rate.

Composite Rate: The rate for firm power that is the total annual revenue requirement for capacity and energy divided by the total annual energy sales. It is expressed in mills/kWh and used for comparison purposes.

Contract 2947A: Contract No. 14–06–200–2947A, as amended, is Western's contract with the Pacific Gas and Electric (PG&E), the Southern California Edison, and the San Diego Gas and Electric (SDG&E) companies for extra high-voltage transmission and exchange service.

Contract 2948A: Contract No. 14–06–200–2948A is the Integration Contract between PG&E and Western. The contract provides for integrating Western's resources with PG&E's and requires PG&E to serve the combined PG&E/Western load with the integrated resource. The contract also requires PG&E to provide wheeling of the power to Western Customers on PG&E's system.

Custom Product Power: Power purchased by Western to meet a Customer's load.

Customer: An entity with a contract that receives service from the Western's Sierra Nevada Customer Service Region (SNR).

DOE: United States Department of Energy.

DOE Order RA 6120.2: A DOE order outlining power marketing administration financial reporting and ratemaking procedures.

Energy Rate: The rate which sets forth the charges for energy. It is expressed in mills/kWh and applied to each kWh delivered to each Customer.

ETCs: Existing Transmission Contracts. Long-term contracts for CVP transmission between Western and other parties, including contracts that predate the Open Access Transmission Tariff (OATT) and point-to-point transmission service under the OATT.

FERC: The Federal Energy Regulatory Commission (to be used when referencing Commission orders).

First Preference: A Customer or entity qualified to use Preference power within a county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity River Division Act of August 12, 1955 (69 Stat. 719) and the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

FRN: **Federal Register** notice.

FY: Fiscal Year. October 1 through September 30.

HCA: Host Control Area. The control area in which SNR has a contractual arrangement to operate as a Sub-Control Area.

kV: Kilovolt. The electrical unit of measure of electric potential that equals 1,000 volts.

kW: Kilowatt. The electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour. The electrical unit of energy that equals 1,000 watts in 1 hour.

kWmonth: Kilowattmonth. The electrical unit of the monthly amount of capacity.

Load: The amount of electric power or energy delivered or required at any specified point(s) on a transmission or distribution system.

Mill: A monetary denomination of the United States that equals one-tenth of a cent or one-thousandth of a dollar.

Mills/kWh: Mills per kilowatthour. The unit of charge for energy.

MW: Megawatt. The electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

NITS: Network Integrated Transmission Service.

O&M: Operation and maintenance.

OATT: Open Access Transmission Tariff.

PACI: Pacific Alternating Current Intertie. A 500-kV transmission project of which Western owns a portion of the facilities.

Path 15 Transmission Upgrade: A transmission project consisting of approximately 84 miles of new 500-kV transmission line in California's western San Joaquin Valley, starting at the existing Los Banos Substation near Los Banos in Merced County and extending generally south southeastward to the existing Gates Substation near Coalinga in Fresno County.

PG&E: The Pacific Gas and Electric Company.

Power: Capacity and energy.

Preference: The provisions of Reclamation Law which require Western to first make Federal power available to certain entities. For example, section 9(c) of the Reclamation Project Act of 1939 states that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936 (43 U.S.C. 485h(c)).

Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.

PRS: Power repayment study.
RAC: Revenue Adjustment Clause. A provision in the existing CVP firm power rate schedule (CV–F10) that compares actual net revenue to projected net revenue from the ratesetting PRS on an FY basis.
Rate Brochure: A document dated May 2004 explaining the rationale and background for the rates contained in this Rate Order.
Reclamation: United States Department of the Interior, Bureau of Reclamation.
Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework under which Western markets power.
SCA: Sub-Control Area. Western's contract-based sub-control area within the Sacramento Municipal Utility District's control area.
SCC: The Sierra Conservation Center is a First Preference Customer located in Tuolumne County, California.
SNR: The Sierra Nevada Customer Service Region of Western.
TPPA: The Tuolumne Public Power Agency is a First Preference Customer located in Tuolumne County, California.
TPUD: The Trinity Public Utilities District is a First Preference Customer located in Trinity County, California.
Washoe Project: A Reclamation project located in the Lahontan Basin in west-central Nevada and east-central California.

Effective Date

The new interim rates will take effect on January 1, 2005, and will remain in effect until September 30, 2009, pending approval by the Commission on a final basis.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR 903, in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. The proposed rate adjustment process began April 25, 2003, when Western mailed a notice announcing an informal meeting to all SNR Customers and interested parties.

2. Western held an informal meeting on May 14, 2003, in Folsom, California. At this informal meeting, Western explained the need for the rate adjustment, presented conceptual rate designs and methodologies, and answered questions. As a result of this meeting, Western received more than 180 comments and questions from interested parties. Western publicly posted these comments and questions with Western's responses on Western's Web site at *http://www.wapa.gov/sn/initiatives/post2004/rates/* in August 2003.

3. On May 7, 2004, Western mailed letters to all SNR Preference Customers and interested parties notifying them of the Proposed Rates **Federal Register** notice due to be published on or around May 13, 2004.

4. A **Federal Register** notice published on May 12, 2004 (69 FR 26370), announced the proposed rates for CVP, COTP, and PACI, began the public consultation and comment period, and announced the public information and public comment forums.

5. On May 12, 2004, Western mailed letters to all SNR Preference Customers and interested parties transmitting the **Federal Register** notice (69 FR 26370) and reiterating the dates and locations of the public information and comment forums.

6. On May 18, 2004, Western held a public information forum at the Folsom Community Center in Folsom, California. Western provided detailed explanations of the proposed rates for CVP, COTP, and PACI and a list of issues that could change the proposed rates. Western provided Rate brochures and informational (slide) handouts.

7. On June 3, 2004, Western mailed letters to all SNR Preference Customers and interested parties transmitting the Web site address to obtain copies of the slides used during the public information forum and providing instructions on how to receive a copy of the Rate Brochure.

8. As a result of the public information forum, several Customers requested meetings to ask clarifying questions of the proposed rates. Western met with the following Customers and/or their representatives on the dates indicated below. Notes from these meetings are included in the record.

Calaveras Public Power Agency, June 3, 2004
City of Shasta Lake, June 17, 2004
Northern California Power Agency (representing cities of Palo Alto, Roseville, Lodi, and Santa Clara (dba Silicon Valley Power), Port of Oakland, and Alameda Power and Telecom), June 3, 2004
Redding Electric, June 8, 2004 (via telephone) and June 16, 2004
Roseville Electric, June 1, 2004
Trinity Public Utility District, June 3, 2004
Tuolumne Public Power Agency, June 3, 2004
City of Santa Clara (dba Silicon Valley Power), July 30, 2004
Department of Energy (via telephone), August 10, 2004

9. In addition to the above meetings, Western communicated clarifying information on the proposed rates with the following Customers. This information is included in the record.

Calpine Corporation, California
City of Palo Alto, California
City of Shasta Lake, California
Duncan, Weinberg, Genzer and Pembroke, PC, Washington, DC
East Contra Costa Irrigation District, California
Energy Security Analysis, Inc., Massachusetts
Lassen Municipal Utility District, California
Northern California Power Agency, California
Redding Electric, California
Roseville Electric, California
Sierra Conservation Center, California
Turlock Irrigation District, California

10. On June 17, 2004, Western held a comment forum to give the public an opportunity to comment for the record. Eight individuals commented at this forum.

11. On July 28, 2004, Western published a letter updating the revenue requirements for Component 1 of the proposed formula rates for regulation and frequency response and spinning and non-spinning reserve services. This letter was sent to all interested parties by mail and electronic mail. The letter was also posted on Western's Web site at *http://www.wapa.gov/sn/initiatives/Post2004/rates/*.

12. Western received 27 comment letters during the consultation and comment period, which ended on August 10, 2004. All comments received prior to the close of the consultation and comment period have been considered in preparing this Rate Order. All written comments received are posted on Western's Web site at *http://www.wapa.gov/sn/initiatives/Post2004/rates/.*

Comments

Written comments were received from the following organizations:

Alameda Power and Telecom, California
Bella Vista Water District, California
Bay Area Municipal Transmission Group, California
Calaveras Public Power Agency, California
Calpine Corporation, California
City of Biggs, California
City of Gridley, California
City of Healdsburg, California
City of Lodi, California
City of Lompoc, California
City of Palo Alto, California

City of Santa Clara (dba Silicon Valley Power), California
City of Ukiah, California
Lassen Municipal Utility District, California
Modesto Irrigation District, California
Moffett Federal Airfield, California
NASA-Ames Research Center, California
Northern California Power Agency (representing the Turlock Irrigation District, the Bay Area Rapid Transit District, Placer County Water Agency, Truckee-Donner Public Utility District, the Lassen Public Utility District, the Plumas-Sierra Rural Electric Cooperative, the Port of Oakland, and the cities of Alameda, Biggs, Gridley, Lodi, Redding, Lompoc, Healdsburg, Ukiah, Palo Alto, and Roseville), California
Pittsburg Power Company, California
Plumas-Sierra Rural Electric Cooperative, California
Port of Oakland, California and Water Resources Pooling Authority (representing the Arvin-Edison Water Storage District, Banta-Carbona Irrigation District, Byron-Bethany Irrigation District, Cawelo Water District, Glenn-Colusa Irrigation District, James Irrigation District, Lower Tule River Irrigation District, Princeton-Codora-Glenn Irrigation District, Provident Irrigation District, Reclamation District 108, Santa Clara Valley Water District, Sonoma County Water Agency, West Stanislaus Irrigation District, Westlands Water District, and the West Side Irrigation District), California
Redding Electric, California
Roseville Electric, California
Sacramento Municipal Utility District, California
Trinity Public Utility District, California
Tuolumne Public Power Agency, California

Representatives of the following organizations made oral comments:

Bay Area Municipal Transmission Group (consisting of the cities of Alameda Power and Telecom, Silicon Valley Power, and the City of Palo Alto), California
City of Palo Alto, California
City of Roseville, California
City of Santa Clara (dba Silicon Valley Power), California
Power and Water Resources Pooling Authority, California
Modesto Irrigation District, California
Redding Electric, California
Sacramento Municipal Utility District, California

Project Description

Initially authorized by Congress in 1935, the CVP is a large water and power system that covers about one-third of the State of California. Legislation set the purposes of the CVP in priority as: (1) Improvement of navigation, (2) river regulation, (3) flood control, (4) irrigation, and (5) power. The CVP Improvement Act of 1992 added fish and wildlife mitigation as a priority above power and added fish and wildlife enhancement as a priority equal to power.

The CVP is within the Central Valley and Trinity River basins of California. It includes 18 dams and reservoirs with a total storage capacity of 13 million acre-feet. The system includes 615 miles of canals, 7 pumping facilities, 11 powerplants with a maximum operating capability of about 2,074 MW, about 852 circuit-miles of high voltage transmission lines, 15 substations, and 16 communication sites. Reclamation operates the water control and delivery system and all of the powerplants except the San Luis Unit, which the State of California operates for Reclamation.

The Rivers and Harbors Act of 1937 authorized Reclamation to build the CVP, including Shasta and Keswick dams on the Sacramento River. The initial authorization included powerplants at Shasta and Keswick dams along with high-voltage transmission lines to transmit power from Shasta and Keswick powerplants to the Tracy Pumping Plant and to integrate Federal hydropower into other electric systems.

Additional CVP facilities were authorized by Congress through a series of laws. The American River Division was authorized in 1944 and includes the Folsom Dam and Powerplant and the Nimbus Dam and Powerplant on the American River. The Trinity Dam and Powerplant, Judge Francis Carr Powerplant, and Whiskeytown Dam and Spring Creek Powerplant were authorized as part of the Trinity River Division in 1955 and allocated up to 25 percent of the resulting energy to Trinity County for use within Trinity County. The San Luis Unit authorized in 1960, includes the B. F. Sisk San Luis Dam, San Luis Reservoir and William R. Gianelli Pump-Generating Plant, O'Neill Pump-Generating Plant, and Dos Amigos Pumping Plant. The Rivers and Harbors Act of 1962 authorized the New Melones Project and allocated up to 25 percent of the resulting energy to Calaveras and Tuolumne counties for use within the counties.

Western's SNR markets the surplus hydropower generation of the CVP and Washoe Project. Since 1967, under the terms of Contract 2948A with PG&E, CVP resources, along with other Western resources, have been integrated with PG&E resources. PG&E serves the combined PG&E/Western loads with the integrated resources.

PG&E has informed Western that it plans to terminate Contract 2948A on December 31, 2004. In anticipation of this eventuality, Western has worked with its Customers to develop and implement the 2004 Power Marketing Plan. The 2004 Power Marketing Plan was published in the **Federal Register**, (64 FR 34417) on June 25, 1999. It established the criteria for marketing CVP and Washoe Project power output for a 20-year period beginning on January 1, 2005, and ending on December 31, 2024.

The Base Resource is a fundamental component and the primary power product marketed through the 2004 Power Marketing Plan. Under previous marketing plans, Preference Customers received a fixed capacity and load factored energy allocation. Under the 2004 Power Marketing Plan, Preference Customers (other than First Preference) receive an allocated percentage of the Base Resource. The Base Resource is defined as the CVP and Washoe Project power output and any existing power purchase contracts extending beyond 2004, determined by Western to be available for marketing after meeting the requirements of project use and First Preference Customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services. In 2000, each CVP Customer (other than First Preference Customers) signed a contract with Western that specifies how Base Resource power will be made available under the 2004 Power Marketing Plan.

In marketing Federal hydroelectric power generated from the CVP, Western currently has 77 Preference and 38 project use Customers serving the equivalent of the annual electrical needs of 790,000 California households.

Power generated from the CVP is first dedicated to project use. The remaining power is allocated to various Preference Customers in California. Types of Preference Customers include: (1) Irrigation and water districts, (2) public utility districts, (3) municipalities, (4) Federal agencies, (5) State agencies, (6) rural electric cooperatives, and (7) Native American tribes.

According to the 2004 Power Marketing Plan, Western will market the Base Resource alone or in combination with custom products. One type of custom product is Custom Product Power, which is power supplied by Western to meet a Customer's load.

In 1964, Congress authorized construction of the 500-kV Pacific

Northwest-Pacific Southwest Alternating Current Intertie. On July 31, 1967, Reclamation (Western's predecessor), PG&E, the Southern California Edison Company, and SDG&E entered into Contract 2947A, an extra high-voltage transmission service and exchange agreement for the northern portion of the PACI. Under Contract 2947A, Western has a 400-MW entitlement of transmission capacity on the PACI. Contract 2947A terminates on December 31, 2004. A replacement agreement for Contract 2947A is being developed in a Commission process.

The COTP is a jointly owned 342-mile, 500-kV transmission line that connects the Captain Jack Substation in southern Oregon to Tracy/Tesla Substation in central California. Operational since March 1993, COTP provides a third high-voltage intertie between the Pacific Northwest and California. COTP owners other than Western are non-Federal participants.

Power Repayment Study

Western prepares a PRS each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the commercial power function. Repayment criteria are based on law, applicable policies including DOE Order RA 6120.2, and authorizing legislation.

Existing and Provisional Power Rates and Revenue Requirement

The 2004 Power Marketing Plan does not offer the same type of power service that was available under the 1994 Power Marketing Plan. Under the 1994 Power Marketing Plan, each Customer was allocated a contract rate of delivery (an amount of capacity) with associated energy, and the Customer was allowed to use up to that amount of capacity in any hour. The total monthly energy was determined based on the Customer's load factor. Under the 2004 Power Marketing Plan, Base Resource and First Preference power is primarily CVP hydrogeneration available subject to water conditions and operating constraints.

Under the 2004 Power Marketing Plan, the power revenue requirement for First Preference and Base Resource power includes O&M, purchased power for project use and First Preference Customer loads, interest expense, annual expenses (including any other statutorily required costs or charges), investment repayment for the CVP, and the Washoe Project annual power revenue requirement that remains after project use loads are met. Revenues from project use, transmission, ancillary services, and other services are applied to the total power revenue requirement, and the remainder is collected from Base Resource and First Preference Customers.

The Base Resource and First Preference power provisional formula rates recover a power revenue requirement through percentages for First Preference and Base Resource Customers. Base Resource Customer percentages were established through the public process for the 2004 Power Marketing Plan. The First Preference Customers' percentages to be used for billing purposes were developed as part of this rate process.

Under the 2004 Power Marketing Plan, a Customer's load can be met through First Preference, Base Resource, and/or Custom Product Power. Custom Product Power may include long- and short-term purchases at various rates. The existing rates do not have a parallel service. All costs associated with Custom Product Power will be recovered through a formula rate that passes through the cost of the purchase to a specific Customer(s). Such costs could include Western's scheduling costs and Components 2 and 3, as well as the cost of the power. A further discussion of the power revenue requirement and Custom Product Power is provided in the power revenue requirement discussion section later in this document.

COMPARISON OF EXISTING RATES AND PROVISIONAL FORMULA RATES FOR WESTERN POWER

Power service	Existing rate	Provisional formula rate	Percent change
Contract Rate of Delivery	30.83 mills/kWh	N/A	N/A.
Base Resource and First Preference	N/A	Percent of Annual Power Revenue Requirement.	N/A.
Custom Product Power	N/A	Pass Through	N/A.

Cost-of-Service Study

Western prepared a detailed cost-of-service study to determine the revenue requirement that will be recovered through the CVP regulation and frequency response service formula rate and the CVP, COTP, and PACI transmission service formula rates. This combined cost-of-service study integrates all three transmission systems. Each CVP, COTP, and PACI facility was researched in order to determine its functional use. The costs for CVP, COTP, and PACI facilities that support the transfer capability of the transmission system (excluding generation ties and radial lines) are included in the respective transmission system's revenue requirement; whereas, the cost for facilities that support the generation capability of the CVP system (including generation ties and radial lines) are included in the CVP generation revenue requirement and are used in the regulation and frequency response service revenue requirement. The costs associated with the CVP are allocated to the transmission and generation functions, based on a ratio of transmission or generation plant to total plant.

Western is using this study because it is more consistent with the methodology used in other Western regions. The costs allocated through the cost-of-service study include O&M, interest, and depreciation expenses. The cost-of-service study contains forecasted O&M and historical financial information, which is also in the PRS. Western's costs for scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service associated with the CVP, COTP, and PACI transmission service are included in and recovered through the respective transmission system's revenue requirement.

CVP Transmission

The provisional formula rate for CVP firm and non-firm transmission service results in an estimated monthly rate of $1.03 per kWmonth for January through September 2005. The provisional formula rate for CVP transmission includes three components:

Component 1:

$$\frac{\text{CVP TRR}}{\text{TTc} + \text{NITSc}}$$

Where:

TRR = Transmission revenue requirement.

TTc = Total transmission capacity under ETCs.

NITSc = Average of 12-month coincident peaks of NITS Customers at the time of the monthly CVP transmission system peak. For rate design purposes, Western's use of the transmission system to meet its statutory obligations is treated as NITS.

This formula rate also contains Components 2 and 3.

The cost-of-service study determines the revenue requirement for Component 1 of this service. The rates from Component 1 of the provisional formula rate may be discounted for short-term sales. The estimated rates from the provisional formula rate are subject to change prior to the rate taking effect.

CVP NITS

The estimated monthly revenue requirement for NITS effective January 1, 2005, is $1,021,712. The provisional formula rate for CVP NITS includes three components:

Component 1:

NITS Customer's monthly costs = NITS Customer's load ratio share times one-twelfth of the annual network TRR.

Where:

NITS Customer's load ratio share = The NITS Customer's hourly load (including behind the meter generation minus the NITS Customer's hourly Base Resource) coincident with the monthly CVP transmission system peak minus the coincident peak for all firm CVP (including reserved transmission capacity) transmission service, expressed as a ratio.

Annual network TRR = Total CVP transmission revenue requirement less ETC revenues.

This formula rate also contains Components 2 and 3.

The cost-of-service study determines the revenue requirement for Component 1 of this service. The provisional formula rate for CVP NITS is based on the same revenue requirement that is used in the CVP firm and non-firm transmission formula rate. The NITS estimated monthly revenue requirement is subject to change prior to the rates taking effect.

COTP Transmission

The provisional formula rate results in estimated monthly rates for COTP firm and non-firm point-to-point transmission service of $1.87 per kWmonth for spring and summer and $1.88 per kWmonth for winter. The provisional formula rate for COTP firm and non-firm point-to-point transmission service consists of three components.

Component 1:

$$\frac{\text{COTP Seasonal Transmission Revenue Requirement}}{\text{Western's Share of COTP Seasonal Capacity}}$$

Component 1 is the ratio of the COTP seasonal transmission revenue requirement to Western's share of the COTP seasonal capacity (subject to curtailment). Western will update the rate resulting from Component 1 at least 15 days before the start of each COI rating season.

This formula rate also contains Components 2 and 3.

The cost-of-service study determines the revenue requirement for Component 1 of this service. The COTP cost-of-service study identifies the costs associated with the facilities that support the transfer capability of the COTP transmission system only. The amount of COTP capacity used in Component 1 of the formula rate will change with the seasonal transfer capability of the COI. The rates from Component 1 of the provisional formula rate may be discounted for short-term sales. The estimated rates from the provisional formula rate are subject to change prior to the rate taking effect.

PACI Transmission

PACI firm and non-firm transmission services are new services. The estimated rates from the formula rate for PACI firm and non-firm point-to-point transmission are $0.45 per kWmonth for spring, summer, and winter. The provisional formula rate for PACI firm and non-firm point-to-point transmission service consists of three components.

Component 1:

$$\frac{\text{PACI Seasonal Transmission Revenue Requirement}}{\text{Western's PACI Seasonal Capacity}}$$

Component 1 is the ratio of the PACI seasonal transmission revenue requirement to Western's share of the PACI seasonal capacity (subject to curtailment). Western will update the rate resulting from Component 1 at least 15 days before the start of each COI rating season.

This formula rate also contains Components 2 and 3.

The cost-of-service study determines the revenue requirement for Component 1 of this service. The PACI cost-of-service study identifies the costs associated with the facilities that support the transfer capability of the PACI transmission system. There are no existing rates for PACI transmission since it is currently covered under an existing contract. The amount of PACI capacity used in Component 1 of the formula rate will change with the seasonal transfer capability of the COI. The rates resulting from Component 1 of the provisional formula rate may be discounted for short-term sales. The estimated rates from the provisional formula rate are subject to change prior to the rate taking effect.

Third-Party Transmission

The provisional formula rate for third-party transmission includes three components. The first component is equivalent to the existing formula rate and allows for Western to pass through costs it incurs for using a third party's transmission system. The provisional formula rate also contains Components 2 and 3.

Path 15 Transmission Upgrade

Western is constructing the Path 15 Transmission Upgrade in conjunction with PG&E and Trans-Elect, Inc. Western will turn over operational control of its rights in the Path 15 Transmission Upgrade to the CAISO. Recovery of the transmission revenue requirement will be through the CAISO tariff and rates.

Existing and Provisional Transmission Rates

A comparison of the existing rates and the estimated rates from the provisional

formula rates for CVP, COTP, and PACI transmission service follows:

COMPARISON OF EXISTING AND ESTIMATED RATES FROM THE PROVISIONAL FORMULA RATES CVP, COTP, AND PACI TRANSMISSION SERVICE

	Existing rates (Note 1)	Estimated rates from the provisional formula rates (effective 1/1/05)	Percent change
CVP Firm Transmission Rate ($/kWmonth)	$0.57	$1.03	81
CVP Non-Firm Transmission Rate (mills/kWh)	1.00	1.40	40
CVP NITS Monthly Revenue Requirement	N/A	$1,021,712	N/A
Third-Party Transmission Rate	Pass Through	Pass Through	N/A
COTP Firm Transmission Rate ($/kWmonth):			
Spring	$0.73	$1.87	156
Summer	$0.53	$1.87	253
Winter	$0.66	$1.88	185
COTP Non-Firm Transmission Rate (mills/kWh):			
Spring	1.00	2.55	155
Summer	0.72	2.54	253
Winter	0.91	2.59	185
PACI Firm Transmission Rate ($/kWmonth):			
Spring	N/A	$0.45	N/A
Summer	N/A	$0.45	N/A
Winter	N/A	$0.45	N/A
PACI Non-Firm Transmission Rate (mills/kWh):			
Spring	N/A	0.61	N/A
Summer	N/A	0.61	N/A
Winter	N/A	0.62	N/A
Path 15 Transmission Upgrade	N/A	Per CAISO Tariff	N/A

Note 1: NITS service not provided prior to 1/1/05.

The estimated rates from the provisional formula rates are the same but are shown here as monthly and hourly rates for comparison to the existing firm and non-firm transmission rates. The increase in CVP transmission rates from the existing rate is primarily due to an increase in O&M costs and a change in Western's use of the CVP transmission system under the 2004 Power Marketing Plan. The increase in COTP transmission rates is primarily due to a decrease in Western's COTP capacity available for sale. The decrease in capacity occurs because of increased usage by DOE of a statutory entitlement at a rate which recovers only O&M costs.

Cost-of-Service Study—Ancillary Services

Six ancillary services will be offered by Western. The costs for two of these ancillary services: (1) Scheduling, system control and dispatch and (2) reactive supply and voltage control service from generation sources, are included in the CVP, COTP, and PACI transmission revenue requirements. The remaining four ancillary services are (3) spinning reserve service, (4) non-spinning reserve service, (5) regulation and frequency response service, and (6) energy imbalance service.

Western used the cost-of-service study to set a revenue requirement for Component 1 of the regulation and frequency response service. The provisional formula rate for this service is designed to recover only the costs associated with providing the service. The revenue requirement for regulation and frequency response service includes the CVP generation costs associated with providing the service and the non-facility costs allocated to the service, as well as the cost of energy, capacity, or foregone generation that support regulation and frequency response service. This formula rate also contains Components 2 and 3.

Spinning and non-spinning reserves will be sold at prices consistent with the CAISO market plus all costs incurred as a result of the sale, such as Western's scheduling costs and Components 2 and 3.

Existing Rates and the Provisional Ancillary Service Rates

A comparison of the existing rates and the estimated rates under the provisional formula rates for ancillary services follows:

COMPARISON OF EXISTING AND ESTIMATED RATES FROM THE PROVISIONAL FORMULA RATES CVP ANCILLARY SERVICES

Ancillary service type	Existing rates	Estimated rate under the provisional formula rates	Change
Scheduling and System Control and Dispatch Service.	Included in the appropriate transmission rates	Included in the appropriate transmission rates	N/A
Reactive Supply Voltage Control Service.	Included in the appropriate transmission rates	Included in the appropriate transmission rates	N/A
Spinning Reserve Service	$2.946 per kWmonth	Prices consistent with CAISO market	Varies
Non-Spinning Reserve Service	$2.491 per kWmonth	Prices consistent with CAISO market	Varies
Regulation and Frequency Response Service.	$2.496 per kWmonth	$2.57 per kWmonth	3%

COMPARISON OF EXISTING AND ESTIMATED RATES FROM THE PROVISIONAL FORMULA RATES CVP ANCILLARY SERVICES—Continued

Ancillary service type	Existing rates	Estimated rate under the provisional formula rates	Change
Energy Imbalance Service	Within Limits of Deviation Band: Accumulated deviations are to be corrected or eliminated within 30 days. Any net deviations that are accumulated at the end of the month (positive or negative) are to be exchanged in like hours of energy or charged at the composite rate then in effect for CVP firm power.	Within Limits of Deviation Band: There is no financial charge for deviations (energy) within the bandwidth.	
	Outside Limits of Deviation Band: Positive Deviations (overdelivery)—the greater of no charge, or any additional cost incurred. Negative Deviations (underdelivery)—during on-peak hours the greater of three times the composite rate then in effect for CVP firm power or any additional cost incurred. During off-peak hours the greater of the composite rate then in effect for CVP firm power or any additional cost incurred.	Outside the Limits of the Deviation Band: Positive Deviations (overdelivery)—for any hourly average positive deviation, the amount of deviation outside the bandwidth (MWh) is lost to the system. Negative Deviations (underdelivery)—for any hourly average negative deviation, the amount of deviation outside the bandwidth (MWh) is charged at the greater of 150 percent of market price or actual cost.	

Certification of Rates

Western's Administrator certified that the provisional formula rates for First Preference, Base Resource, Custom Product Power, CVP, COTP, and PACI transmission and CVP ancillary services are the lowest possible rates consistent with sound business principles. The provisional formula rates were developed following administrative policies and applicable laws.

Power Revenue Requirement Discussion

According to Reclamation Law, Western must establish rates sufficient to recover O&M, purchased power expenses, other annual expenses, interest expenses, and repayment of power investment and irrigation aid.

The power revenue requirement for Base Resource and First Preference power includes the following expenses: annual investment repayment, purchases to firm the Base Resource and First Preference power deliveries for up to 2 hours, power purchased for project use and First Preference Customers, interest expense, O&M expense allocated to power, and the Washoe Project annual power revenue requirement that remains after project use loads are met. Revenues from project use, transmission, ancillary services, and other services are applied to the total power revenue requirement, and the remainder is collected from Base Resource and First Preference Customers. The power revenue requirement includes Components 2 and 3.

Statement of Revenue and Related Expenses

The following table provides a summary of projected revenue and expense data from the PRS through the 4¾-year provisional rate approval period. The table includes a comparison of existing rate data to provisional rate data and the difference.

PRS COMPARISON OF 4¾ YEAR RATE PERIOD (JAN 1, 2005–SEP 30, 2009), TOTAL REVENUES AND EXPENSES

	Existing rate (Note 1) ($000)	Provisional revenue requirement ($000)	Difference ($000)
Total Revenues	N/A	$812,165	N/A
Revenue Distribution Annual Expenses:			
O&M	N/A	343,555	N/A
Purchased Power	N/A	244,063	N/A
Interest	N/A	30,786	N/A
Other	N/A	139,315	N/A
Total Annual Expenses	N/A	757,719	N/A
Annual Principal Payments:			
Capitalized Expenses	N/A	0	N/A
Original Project and Additions	N/A	41,050	N/A
Replacements	N/A	13,396	N/A
Irrigation Aid	N/A	0	N/A
Total Principal Payments	N/A	54,446	N/A
Total Revenue Distribution	N/A	812,165	N/A

Note 1: The 2004 Power Marketing Plan does not offer the same type of power service that is available under the 1994 Power Marketing Plan; hence, the existing rates could not be used under the 2004 Power Marketing Plan.

Western will develop the power revenue requirement for First Preference and Base Resource power prior to the start of each FY. The power revenue requirement for the April through September period will be reviewed in March of each year (except March 2005). The review will analyze financial data from the October through February

period, to the extent information is available, as well as forecasted data for the March through September period. If there is a change of $5 million or more, the power revenue requirement for the April through September period will be recalculated. A monthly power revenue requirement will be calculated by dividing each 6-month power revenue requirement by six. For the January through September 2005 period, a power revenue requirement will be calculated for a 9-month period instead of a year.

Provisional Formula Rate for First Preference Power

To have a consistent billing process for Base Resource and First Preference Customers, a percentage will be developed for each First Preference Customer before the start of each FY based on the following formula:

$$\text{First Preference Customer's \%} = \frac{\text{FP Customer Load}}{\text{Gen} + \text{Power Purchases} - \text{Project Use}}$$

Where:

FP Customer Load = A First Preference Customer's forecasted annual load (MWh).

Gen = The forecasted annual CVP and Washoe Project generation (MWh).

Power Purchases = Forecasted power purchase for project use and First Preference loads (MWh).

Project Use = The forecasted annual project use load (MWh).

For January through September 2005, the same formula will be used with data for the 9-month period instead of annual data.

During March of each year (except March 2005), each First Preference Customer's percentage will be reviewed by Western. The review will take into account the actual and estimated current FY data used in the First Preference Customer's percentage formula. If Western's review results in a change in a First Preference Customer's percentage of more than one-half of 1 percent, the percentage will be revised for that First Preference Customer for the remainder of the current FY. The review will not occur in March 2005 because the 2004 Power Marketing Plan will have been in effect for a very short period of time.

Each First Preference Customer's monthly charges are determined by the following formula:

First Preference Customer's monthly costs = 6-month power revenue requirement divided by six, times the First Preference Customer's percentage.

Starting with FY 2006, the First Preference Customers' share of the annual power revenue requirement is divided into two 6-month revenue requirements. The first 6-month revenue requirement will be collected from October through March and the second 6-month revenue requirement will be collected from April through September. The estimated April through September power revenue requirement will be reviewed by Western in March (with the exception of March 2005). Western's review will analyze financial data relating to the power revenue requirement for October through February, to the extent it is available, as well as forecasted data for March through September. If, as a result of Western's review, the power revenue requirement changes by $5 million or more, the April through September power revenue requirement will be revised.

The power revenue requirement for January through September 2005 will be divided by nine to determine a monthly power revenue requirement. Each First Preference Customer's percentage will be applied to the monthly power revenue requirement to determine each First Preference Customer's monthly costs. The estimated power revenue requirement for January through September 2005 is $30 million. The estimated First Preference Customers' revenue requirement for January through September 2005 is $1,110,000 (sum of all First Preference Customers' estimated percentages of 3.7 percent multiplied by the power revenue requirement for January through September 2005 of $30 million). The estimated power revenue requirement and First Preference Customers' percentages are subject to change prior to the rates taking effect.

Provisional Formula Rate for Base Resource

Base Resource Customer's monthly cost = Base Resource Customer's percentage times the Base Resource monthly revenue requirement.

A Customer's Base Resource percentage may be adjusted as provided for in the contract; *e.g.,* participation in the exchange program. After the First Preference Customers' share of the annual power revenue requirement has been determined, the remainder of the annual power revenue requirement is recovered from the Base Resource Customers. The Base Resource revenue requirement will be collected in two 6-month periods. For October through March, 25 percent of the Base Resource revenue requirement will be collected. For April through September, 75 percent of the Base Resource revenue requirement will be collected. Allocating the Base Resource revenue requirement in this manner aligns the base resource revenue requirement with the Base Resource availability during the two 6-month periods. CVP generation is greater in the April through September period than the October through March period. The shifting of the Base Resource revenue requirement will help minimize monthly per unit cost variations for the Customers.

A Base Resource monthly revenue requirement is calculated by dividing the Base Resource estimated 6-month revenue requirement by six. A Customer's Base Resource costs are independent of the Base Resource received. Base Resource energy not used by any Preference Customer will be sold, if possible, and the revenues will reduce the Base Resource revenue requirement. The revenues from the sale of surplus Base Resource will be applied to the estimated annual Base Resource revenue requirement for the following FY.

The estimated power revenue requirement for January through September 2005 is $30 million and the estimated First Preference Customers' revenue requirement is $1,110,000; therefore, the estimated Base Resource revenue requirement is $28,890,000. The Base Resource revenue requirement will be allocated 25 percent to the 3-month period from January through March 2005 and 75 percent to the 6-month period, April through September 2005. For January through March 2005, the estimated Base Resource revenue requirement is $2,407,500 per month. For April through September 2005, the estimated Base Resource revenue requirement is $3,611,250 per month. The estimated Base Resource revenue requirement for January through September 2005 may change prior to the rate taking effect.

Provisional Formula Rate for Custom Product Power

All costs associated with Custom Product Power will be recovered using a formula rate that passes through all costs of the purchase to a specific Customer(s). Such costs could include Western's scheduling costs and Components 2 and 3, as well as the cost of the power. Under the 2004 Power Marketing Plan, Custom Product Power is power supplied by Western to meet a Customer's load. Western may make Custom Product Power purchases for a group of Customers or for an individual Customer. Costs for Custom Product Power purchases that are funded in advance by the Customer(s) will be passed through to that Customer(s) based on the power forecasted to the Customer(s). Unless otherwise agreed to by Western, Custom Product Power funded in advance that is surplus to the load requirements of the Customer(s) will be sold. If the Customer(s) fails to have an account available to receive the proceeds from the sale of surplus Custom Product Power, the proceeds are forfeited to Western and will be applied to the Custom Product Power purchase cost for the Customer(s).

If the Custom Product Power purchase is funded through appropriations, Federal reimbursable, or use of receipts authority, the cost of the Custom Product Power is passed through to the Customer(s) that have that power in their final schedules. Custom Product Power funded through appropriations, Federal reimbursable authority, or use of receipts authority that is surplus to the load of the Customer(s) will be sold. Proceeds from the sale of surplus Custom Product Power funded through use of receipts authority, Federal reimbursable authority, or appropriations will be applied to the Custom Product Power purchase cost for the Customer(s).

Change in RAC in Existing CVP Firm Power Rate Schedule CV–F10

Western is changing the RAC for FY 2004. Under the existing CVP Firm Power Rate Schedule CV–F10, a RAC credit for FY 2004 would be applied in equal amounts to the nine power bills issued by Western from January through September 2005. Western is changing the RAC to allow Western to make lump-sum payments to Customers for their share of the FY 2004 RAC credit, as opposed to issuing credits in equal amounts to the power bills issued from January through September 2005. This change in the RAC will allow Western more flexibility as it moves to the 2004 Power Marketing Plan. This change will not affect the calculation of the FY 2004 RAC or the determination of each Customer's share of the FY 2004 RAC.

For the October to December 2004 RAC, Western is changing the existing process of calculating the RAC and applying the resulting RAC credit or surcharge to the power bills issued from April through September 2005. Western will delay calculation of the October through December 2004 RAC so that any outstanding project use true-ups and any unmet obligations under existing contracts associated with business that occurred prior to January 1, 2005, can be included in the October through December 2004 RAC. Once this data is available, Western will calculate the October through December 2004 RAC using the existing methodology. This will likely delay the October through December 2004 RAC until sometime in FY 2006. The resulting RAC credit or surcharge will be allocated among the power Customers taking firm power during October through December 2004 under the existing methodology. Western will initiate distribution of the RAC credit or surcharge within 60 days of completing the RAC calculation. If the result was a RAC credit, at Western's discretion, Western will either credit the Customers' power bills to the extent possible, or Western will make a lump-sum payment to the Customers for their share of the RAC. If the result is a RAC surcharge, at Western's discretion, Western could collect the payment in equal installments over 9 months or as a lump sum.

Comments

The comments and responses regarding changes in RAC procedure for CV-F10 and First Preference, Base Resource, and Custom Product Power formula rates, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

A. *Comment:* Some of the First Preference Customers expressed concern that during several consecutive drought years, they would be paying for all of Western's costs that would normally be covered by revenues from the Base Resource. These Customers suggested an alternative methodology that affected both the First Preference and Base Resource Customers. The suggestion charged the First Preference Customers based on a percentage of repayment obligation as opposed to the receipt of energy or Base Resource percentage. Western could base the percentage of repayment obligation on some sort of average; *e.g.,* long-term average, 5-year rolling average, or a single average water year.

Response: Western considered these comments, reviewed the alternatives presented by the Customers, and evaluated several other scenarios that might mitigate the financial impacts experienced by the First Preference Customers. Western's analysis determined that the financial impacts experienced by the First Preference Customers are similar to those experienced by the Base Resource Customers. According to this analysis, the First Preference Customers do not pay a larger per unit cost. As a means of mitigating the First Preference Customers' concerns, Western reviewed estimated First Preference percentages in different hydrological years. As a result of this review, Western has determined a maximum percentage for each First Preference Customer: SCC 1.39 percent, CPPA 3.49 percent, TPUD 9.21 percent, and TPPA 3.42 percent. The maximum percentages were determined based on a critically dry year where there are hydrologic conditions that result in low CVP generation and, consequently, low levels of Base Resource. These maximum percentages are not used in instances where individual First Preference Customer percentages increase due to load growth. If a maximum percentage is used for determining a First Preference Customer's costs for more than 1 year, then Western will evaluate that First Preference Customer's percentage resulting from the formula rate versus the maximum percentage and make adjustments as appropriate.

B. *Comment:* A First Preference Customer requested that Western consider converting its monthly fixed payment obligation to a per kWh rate with periodic adjustments. This conversion would better parallel its cash flow from its retail Customers.

Response: While Western understands the complexity of managing cash flow with a variable power product, as is provided through the 2004 Power Marketing Plan, Western intends to provide the Customer with sufficient information to calculate a per unit rate. Changing to a billing method using per unit cost versus a fixed payment obligation would not change the First Preference Customer's share of Western power costs. As stated earlier, Western will review the power revenue requirement every 6 months. The power revenue requirement will be changed in March only if it exceeds the $5 million threshold. As part of the record for the rate case, Western has provided estimated annual power revenue

requirements for January through September 2005 and FY 2006 through 2009. Western has provided estimated percentages for all First Preference Customers for January through September 2005 and for FY 2006 so that the First Preference Customers could use that data in developing their future budgets.

C. *Comment:* Several Customers expressed concern regarding the disposition of proceeds from the sale of surplus Custom Product Power. The proposed formula rate for Custom Product Power indicated that the proceeds are forfeited to Western if a Customer fails to have an account available to receive the proceeds from such a sale. The Customers requested that Western change this language to allow for the proceeds to be applied to future Custom Product Power purchases on behalf of the Customer(s).

Response: If Western receives the proceeds from the sale of surplus Custom Product Power, they will be applied to the current Custom Product Power cost for the Customer(s). Under its trust authority, Western cannot use these proceeds to fund future Custom Product Power purchases.

D. *Comment:* A Customer indicated its support of Western's intention to better align the Base Resource monthly revenue requirement with CVP generation. The Customer thought this procedure would help reduce monthly per unit cost variations for Western's Customers.

Response: Western notes the comment.

E. *Comment:* A Customer ''applaud[ed] Western's efforts to separately track any costs associated with supplemental or custom products to ensure no cost shifting occurs with the Base Resource.''

Response: Western notes the comment.

Provisional Formula Rate for CVP Firm and Non-Firm Transmission

The provisional formula rate for CVP firm and non-firm transmission includes three components:

Component 1

$$\frac{\text{CVP transmission revenue requirement}}{\text{TTc} + \text{NITSc}}$$

Where:

TTc = Total transmission capacity under ETCs.

NITSc = Average of 12-month coincident peaks of NITS Customers at the time of the monthly CVP transmission system peak. For rate design purposes, Western's use of the transmission system to meet its statutory obligations is treated as NITS.

This provisional formula rate also contains Components 2 and 3.

The rate from Component 1 will be used for CVP firm and non-firm transmission service. Western will revise the rate resulting from Component 1 of the provisional formula rate based on either of the following two conditions: (a) Updated financial data available in March of each year, and (b) a change in the numerator or denominator that results in a rate change of at least $0.05 per kWmonth. The estimated monthly rate resulting from Component 1 of the provisional formula rate for January through September 2005 has increased from $0.93 per kWmonth to $1.03 per kWmonth. The increase is primarily due to a correction in the classification of Western's rights on a third party's transmission system for CVP generation. The $1.03 per kWmonth rate is an 81 percent increase from the existing rate of $0.57 per kWmonth.

The estimated hourly rate from Component 1 of the provisional formula rate for CVP transmission service for January through September 2005 has increased from 1.30 mills/kWh to 1.40 mills/kWh for the same reason stated above. The 1.40 mills/kWh is a 40 percent increase from the existing CVP non-firm transmission service rate of 1.00 mill/kWh. The percentage increase for the estimated hourly rates is smaller than the percentage increase for estimated monthly rates because the existing CVP non-firm transmission rate was rounded up to 1.00 mill/kWh. The increase in CVP transmission rates from the existing rate is primarily due to an increase in O&M costs and a change in Western's use of the CVP transmission system under the 2004 Power Marketing Plan. Under the 1994 Power Marketing Plan, Western was reserving transmission capacity based on the maximum output of directly connected CVP generating plants under normal operating conditions. Under the 2004 Power Marketing Plan, Western's use of the CVP transmission system to meet its statutory obligations is treated as NITS for rate design purposes. The rates from Component 1 of the provisional formula rate may be discounted for short-term sales. The estimated rates from the provisional formula rate are subject to change prior to the rate taking effect.

The provisional formula rate for CVP transmission service is based on a revenue requirement that recovers: (1) The CVP transmission system costs for facilities associated with providing transmission service, (2) the non-facility costs allocated to transmission service, (3) CVP generation costs for providing reactive supply and voltage control from generation sources, (4) Component 2, (5) Component 3, (6) any other statutorily required costs or charges, and (7) any other costs associated with transmission service, including uncollectible debt. Revenues from the sales of short-term transmission will offset the transmission revenue requirement.

Component 1 of the provisional formula rate includes Western's cost for transmission scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service associated with the transmission service. The provisional formula rate applies to ETCs.

Provisional Formula Rate for CVP NITS

The provisional formula rate for CVP NITS includes three components:

Component 1:

NITS Customer's monthly demand charge = NITS Customer's load ratio share times one-twelfth (1/12) of the annual network TRR.

Where:

NITS Customer's load ratio share = The NITS Customer's hourly load (including behind the meter generation minus the NITS Customer's hourly Base Resource) coincident with the monthly CVP transmission system peak minus the coincident peak for all firm CVP (including reserved transmission capacity) transmission service, expressed as a ratio.

Annual network TRR = Total CVP transmission revenue requirement less ETC revenues.

The Annual Network TRR will be revised when the rate from Component 1 of the CVP transmission rate under Rate Schedule CV–T1 is revised. This provisional formula rate also contains Components 2 and 3.

The provisional formula rate for CVP NITS is based on a revenue requirement that recovers: (1) The CVP transmission system costs for facilities associated with providing transmission service, (2) the non-facility costs allocated to transmission service, (3) CVP generation costs for providing reactive supply and voltage control from generation sources, (4) Component 2, (5) Component 3, (6) any other statutorily required costs or charges, and (7) any other costs associated with transmission service, including uncollectible debt. For January through September 2005, the estimated NITS monthly revenue requirement is $1,021,712. The

estimated monthly revenue requirement resulting from the provisional formula rate has increased to $1,021,712 from the estimated monthly revenue requirement in the proposed rates of $926,316. The increase is primarily due to a correction in the classification of Western's rights on a third party's transmission system for CVP generation. NITS was not provided prior to January 1, 2005, so there is no existing monthly revenue requirement for NITS.

The provisional formula rate includes Western's cost for transmission scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service associated with the CVP NITS. The NITS estimated monthly revenue requirement is subject to change prior to the rates taking effect.

Provisional Formula Rate for Third-Party Transmission

The provisional formula rate for third-party transmission includes three components:

Component 1: Western will directly pass through any costs it incurs for using a third party's transmission system to the requesting Customer. Rates under this schedule are to be automatically adjusted as third-party transmission costs are adjusted.

The formula rate for this service also contains Components 2 and 3.

Provisional Formula Rate for COTP Firm and Non-Firm Point-to-Point Transmission

The provisional formula rate for COTP firm and non-firm transmission includes three components:

Component 1:

$$\frac{\text{COTP Seasonal Transmission Revenue Requirement}}{\text{Western's Share of COTP Seasonal Capacity}}$$

Component 1 is the ratio of the COTP seasonal transmission revenue requirement to Western's share of the COTP seasonal capacity (subject to curtailment). Western will update the rate from Component 1 at least 15 days before the start of each COI rating season. The rate from Component 1 will be used for COTP firm and non-firm transmission service.

This formula rate for this service also contains Component 2 and 3.

A comparison of the estimated monthly rates from Component 1 of the provisional formula rate for COTP point-to-point transmission service to the COTP firm point-to-point transmission service existing rates are shown in the table below.

COMPARISON OF EXISTING RATES TO ESTIMATED RATES FROM COMPONENT 1 OF THE PROVISIONAL FORMULA RATE FOR COTP FIRM POINT-TO-POINT TRANSMISSION SERVICE

Season	Existing rate	Estimated rates from the provisional formula rate	Percent increase
Spring	$0.73/kWmonth	$1.87/kWmonth	156
Summer	$0.53/kWmonth	$1.87/kWmonth	253
Winter	$0.66/kWmonth	$1.88/kWmonth	185

A comparison of the estimated hourly rates from Component 1 of the provisional formula rate for COTP point-to-point transmission service to the COTP non-firm point-to-point transmission service existing rates are shown in the table below.

COMPARISON OF EXISTING RATES TO ESTIMATED RATES FROM COMPONENT 1 OF THE PROVISIONAL FORMULA RATE FOR COTP NON-FIRM POINT-TO-POINT TRANSMISSION SERVICE

Season	Existing rate	Estimated rate from the provisional formula rate	Percent increase
Spring	1.00 mill/kWh	2.55 mills/kWh	155
Summer	0.72 mill/kWh	2.54 mills/kWh	253
Winter	0.91 mill/kWh	2.59 mills/kWh	185

The minimal change in the estimated rates from Component 1 of the provisional formula rate is due to the variance in the number of hours in the COI rating season. The increase in the estimated rates from the provisional formula rate from the existing rates is primarily due to a decrease in Western's COTP capacity available for sale. The decrease in capacity occurs because of increased usage by the DOE of its statutory entitlement at a rate which recovers only O&M costs.

The provisional formula rate for COTP firm and non-firm point-to-point transmission service is based on a revenue requirement that recovers: (1) The COTP transmission system costs for facilities associated with providing transmission service, (2) the non-facility costs allocated to transmission service, (3) CVP generation costs for providing reactive supply and voltage control from generation sources service, (4) Component 2, (5) Component 3, (6) any other statutorily required costs or charges, and (7) any other costs associated with transmission service, including uncollectible debt.

The provisional formula rate includes Western's cost for transmission scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service associated with COTP transmission. The provisional formula rate applies to COTP point-to-point transmission service. The rates from Component 1 of the provisional formula rate may be discounted for short-term sales. The estimated rates from the provisional

formula rate are subject to change prior to the rate taking effect.

Provisional Formula Rate for PACI Firm and Non-Firm Transmission

The provisional formula rate for PACI firm and non-firm transmission includes three components:

Component 1

$$\frac{\text{PACI Seasonal Transmission Revenue Requirement}}{\text{Western's PACI Seasonal Capacity}}$$

Component 1 is the ratio of the PACI seasonal transmission revenue requirement to Western's share of the PACI seasonal capacity. Western will update the rate from Component 1 at least 15 days before the start of each COI rating season. The rate from Component 1 will be used for COTP firm and non-firm transmission service.

This formula rate for this service also contains Components 2 and 3.

The estimated monthly and hourly rates resulting from Component 1 of the provisional formula rate for PACI transmission service are shown in the table below.

ESTIMATED RATES FROM COMPONENT 1 OF THE PROVISIONAL FORMULA RATE FOR PACI TRANSMISSION

Season	Estimated monthly rate	Estimated hourly rate
Spring	$0.45/kWmonth	0.61 mill/kWh.
Summer	$0.45/kWmonth	0.61 mill/kWh.
Winter	$0.45/kWmonth	0.62 mill/kWh.

The minimal change in the estimated seasonal rates from Component 1 of the provisional formula rate is due to the variance in the number of hours in the COI rating season. There are no existing rates for PACI transmission since it is currently covered under an existing contract. The provisional formula rate for PACI transmission service is based on a revenue requirement that recovers: (1) The PACI transmission system costs for facilities associated with providing transmission service, (2) the non-facility costs allocated to transmission service, (3) CVP generation costs for providing reactive supply and voltage control from generation sources service, (4) Component 2, (5) Component 3, (6) any other statutorily required costs or charges, and (7) any other costs associated with transmission service, including uncollectible debt.

The provisional formula rate includes Western's cost for transmission scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service associated with PACI transmission. The provisional formula rate applies to PACI point-to-point transmission service. The rates from Component 1 of the provisional formula rate may be discounted for short-term sales. The estimated rates from the provisional formula rate are subject to change prior to the rate taking effect.

Path 15 Transmission Upgrade

Western intends to turn over operational control of its rights on the Path 15 Transmission Upgrade to the CAISO under Amendment No. 48 of the CAISO Tariff. Transmission service for Western's rights on the Path 15 Transmission Upgrade must be obtained under the terms and conditions established by the CAISO. Under Amendment No. 48, the CAISO remits to Western wheeling, congestion, and Firm Transmission Rights auction revenues associated with Western's rights on the Path 15 Transmission Upgrade. While Western is turning over its rights on the Path 15 Transmission Upgrade under Amendment No. 48, Western desires to work with the CAISO to return revenues that are in excess of Western's costs associated with Western's use of the Path 15 Transmission Upgrade. As a result, if a significant overcollection occurs, Western will work with the CAISO on the treatment of the overcollection.

Comments

The comments and responses regarding Western's entitlement on the Path 15 Transmission Upgrade, the CVP, COTP, and PACI firm and non-firm transmission, and CVP NITS formula rates, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

A. *Comment:* A large number of Customers indicated that Western should consider developing transmission rates that result in comparable delivery costs for all Federal Customers. It was suggested that Western consolidate both Federal transmission costs and third-party transmission costs for delivering Base Resource energy when developing the CVP transmission revenue requirement. This consolidation would then allow for a sharing of costs between the Customers directly connected to the CVP transmission system, Customers that are not directly connected to the CVP transmission system, and any other users of the CVP transmission system. Another alternative was provided in the event that consolidation is not possible. That is, to provide the Customers that are not connected to the CVP transmission system relief by removing the CVP transmission costs from their Base Resource revenue requirement. By sharing costs, the Customers felt that all Customers would be treated equally and the legislative intent of limited development of the Federal transmission system would be preserved. Conversely, Western received several contrary opinions from Customers directly connected to the CVP transmission system. These Customers objected to the inequity of such a rate design.

Response: The 2004 Power Marketing Plan states that each entity is ultimately responsible for obtaining its own delivery arrangements to load. Western believes payment of Base Resource delivery costs, including CVP and third-party transmission, by the Customer receiving the Base Resource is consistent with the 2004 Power Marketing Plan and the appropriate method to recover such costs.

B. *Comment:* In Western's original proposal provided in May 2003, certain CAISO and PG&E charges were originally included in the transmission service for the PACI. Western's proposed rates presented in May 2004 excluded these costs from the PACI revenue requirement. Since the Commission process to negotiate the PG&E charges and potential credits for Western's transmission facilities is expected to continue well after these rates are implemented, and the Customer has no desire to have the rates increase as a result of these Commission-sponsored negotiations, the Customer suggests including the potential credits in the revenue requirement.

Response: Western understands the Customer's concern regarding the potential credits for Western's transmission facilities that could decrease the costs for delivering Western power on the PG&E system. Western does not have a method to estimate the amount of potential credits and will not receive these credits unless they are approved by the Commission. If Western were to reduce the third-party pass-through costs to reflect these credits prior to the Commission's approval, Western would not be collecting the full cost being charged to Western by PG&E.

C. *Comment:* A comment asserted that the intent of the Federal legislation authorizing the PACI was that Western's Customers would pay costs that would not exceed the cost of Federal construction. To ensure that all Customers receive the benefit intended by the Federal legislation authorizing the PACI, certain Western power delivery costs should be included in the PACI annual revenue requirement. The Customer referred to Western's original May 2003 informal rates proposal containing this approach.

Response: When Western proposed including third-party transmission costs in the PACI revenue requirement, PG&E had taken the position that Western's end-use Customers would have to pay PG&E's retail tariff costs (excluding energy costs) for delivery of Western power. Under that scenario, Western contemplated including third-party transmission costs in the PACI revenue requirement. In March 2004, PG&E filed with the Commission a wholesale distribution tariff rate for delivery of Western power to Western's end-use Customers. Western will pursue credit for its facilities in the Commission proceedings on PG&E's filing.

D. *Comment:* Several Customers connected to the CVP transmission system asked that Western change the CVP transmission formula rate determinant from forecasted CVP generation to ''maximum output from the CVP Base Resource generation.'' The comment indicated that the proper recovery methodology for the capital investment and ongoing O&M expenses associated with transmission facilities represents a capacity related investment that is based upon a firm-peak delivery capability of facilities.

Response: Western understands the Customers' concerns. Using the maximum operating capacity of the CVP northern power plants under normal operating conditions (annual peak) was appropriate under the 1994 Power Marketing Plan, due to contractual obligations under Contract 2948A. The 2004 Power Marketing Plan does not offer the same type of power service that is available under the 1994 Power Marketing Plan. Under the 2004 Power Marketing Plan, Base Resource and First Preference power is primarily the output of the CVP, which varies month to month. Under the 2004 Power Marketing Plan, Western has changed its use of the CVP transmission system for the delivery of CVP northern power plants generation from an annual peak to monthly peaks for rate design purposes. Western's treatment of its statutory obligations in the CVP transmission rate design is consistent with the 2004 Power Marketing Plan and NITS under Western's OATT.

E. *Comment:* A Customer informed Western of the significant financial impact the last increase in transmission rates had on its company and asked that Western charge all transmission Customers on the same basis to preserve equity and fairness. The Customer recommends that the proposed transmission rates be cost-based, allocated on cost causation principles, and recognize the transmission system investments made by Customers connected to the CVP transmission system. The Customer felt that Western's proposal to allocate transmission cost using a coincident peak billing determinant was discriminatory and unfairly shifted costs to contract transmission Customers.

Response: Western in its last rate case, as in this rate case, uses a Commission-approved methodology of plant-based cost allocation. As demonstrated in the Rate Brochure, NITS and ETC Customers pay the same per unit cost. As mentioned in Western's response to the comment above, Western is marketing a different product under the 2004 Power Marketing Plan than was offered under the 1994 Power Marketing Plan. This change requires Western to use a different type of transmission service for CVP generation and changes the billing determinant in the formula rate. Under the OATT, Customers can choose the type of transmission service that best fits its needs, NITS or point-to-point.

Provisional Rates for Ancillary Services

Western's costs for providing transmission scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service are included in the appropriate transmission revenue requirement.

Provisional Formula Rate for Spinning Reserve

The provisional formula rate for spinning reserve is the price consistent with the CAISO market plus all costs incurred as a result of the sale of spinning reserves, such as Western's scheduling costs and Components 2 and 3.

For Customers that have a contractual obligation to provide reserves to Western and do not fulfill that obligation, the penalty for nonperformance will be the greater of actual costs or 150 percent of the market price.

Revenues from spinning reserve sales will offset the power revenue requirement. The cost for spinning reserve required to firm CVP generation for the current hour and the following hour is included in the power revenue requirement.

Based on comments received, Western has modified its proposed rate to the provisional rate stated above. Western believes this addresses the comments regarding the spinning reserve proposed formula rate and provides a benefit to all power Customers of the ancillary services available from the CVP.

Provisional Formula Rate for Non-Spinning Reserve

The provisional formula rate for non-spinning reserve is the price consistent with the CAISO market plus all costs incurred as a result of the sale of non-spinning reserves, such as Western's scheduling costs and Components 2 and 3.

For Customers that have a contractual obligation to provide reserves to Western and do not fulfill that obligation, the penalty for nonperformance will be the greater of actual costs or 150 percent of the market price.

Revenues from non-spinning reserve sales will offset the power revenue requirement. The cost for non-spinning reserve required to firm CVP generation

for the current hour and the following hour is included in the power revenue requirement. Based on comments received, Western has modified its proposed rate to the provisional rate stated above. Western believes this addresses the comments regarding the non-spinning reserve proposed formula rate and provides a benefit to all power Customers of the ancillary services available from the CVP.

Provisional Formula Rate for Regulation and Frequency Response Service

The provisional formula rate for regulation and frequency response service includes three components:

Component 1

$$\frac{\text{Annual Revenue Requirement}}{\text{Annual Regulating Capacity kW}}$$

The revenue requirement includes: (1) The CVP generation costs associated with providing regulation and frequency response service, (2) the non-facility costs allocated to regulation and frequency response service, (3) Component 2, (4) Component 3, (5) any other statutorily required costs or charges, and (6) actual purchase costs. Western will revise the rate from Component 1 of the provisional formula rate based on either of the following two conditions: (a) updated financial data available in March of each year, and (b) a change in the rate of at least $0.25 per kWmonth.

The annual regulating capacity is the total regulating capacity bandwidths provided by Western under the interconnected operations agreements with SCA members. The penalty for nonperformance by an SCA member who has committed to self-provide its regulating capacity requirement will be the greater of actual costs or 150 percent of the market price.

This formula rate also contains Components 2 and 3.

The regulation and frequency response service will be recovered from SCA members that have signed an interconnected operations agreement with Western. The revenues from regulation and frequency response service will be applied to the power revenue requirement. The estimated rate from the provisional formula rate is subject to change prior to the rate taking effect.

Provisional Formula Rate for Energy Imbalance Service

The provisional formula rate for energy imbalance service includes three components:

Component 1: If there is an hourly average negative deviation (underdelivery) outside the bandwidth, the amount of the deviation outside of the bandwidth will be charged at the greater of 150 percent of market price or actual cost. If there is an hourly average positive deviation outside the bandwidth, the amount of the deviation outside of the bandwidth is lost to the system.

This formula rate also contains Components 2 and 3.

Under the provisional formula rate, deviations outside the bandwidth are energy calculations done on an average hourly basis. There is no financial charge for deviations within the bandwidth. The energy imbalance rate will apply to SCA members that have signed an interconnected operations agreement with Western. The revenues from energy imbalance service will be applied to the power revenue requirement.

Comments

The comments and responses regarding the spinning reserve, non-spinning reserve, regulation and frequency response service, and energy imbalance service formula rates, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

A. *Comment:* Several Customers indicated that the inclusion of purchases to support regulation and spinning and non-spinning reserve service was inappropriate given how Western expects to operate the SCA.

Response: Western considered these comments and removed the estimate for the purchases from the revenue requirements. If actual purchase costs are incurred to support these services, these costs will be recovered through the appropriate formula rate.

B. *Comment:* Several Customers expressed concern about the formula used to determine regulation capacity in the proposed rates. According to Western, this formula is used in practice by other wholesale utilities.

Response: Western considered this comment, and the formula for determining regulation capacity is no longer part of the regulation and frequency response service formula rate. Regulating capacity will be determined as provided for in the interconnected operations agreement with Western.

C. *Comment:* A large number of Customers commented that Western should consider providing a Base Resource share of ancillary service benefits regardless of control area restrictions. These Customers indicated that Western's proposal to sell surplus ancillary services at prices consistent with CAISO markets is discriminatory to Customers not connected to the CVP transmission system. Western's proposed formula rates allow for SCA members to receive ancillary services at cost. These Customers that are not connected to the CVP transmission system requested that Western remedy this discriminatory treatment of ancillary service sales to Customers not connected to the CVP transmission system by allowing proportionate access to these ancillary services to all of its Customers at similar rates prior to selling to the market.

Response: Western has revised the formula rate for spinning and non-spinning reserve services from the proposed formula rates. As a result, spinning and non-spinning reserves are sold at a price consistent with the CAISO market regardless of whether a Customer is connected to the CVP transmission system. Due to existing scheduling constraints, Western is not able to provide regulation and frequency response and energy imbalance to Western Customers outside of the SCA/HCA.

D. *Comment:* A Customer suggested that Western should consider a higher penalty for underdeliveries for energy imbalance service. The Customer recommended that Western charge 300 percent of actual cost as opposed to the greater of 150 percent of market price or actual cost, as indicated in the proposed formula rate for this service.

Response: Western understands the concern expressed by the Customer. Western believes that an increase to 300 percent may be more punitive than necessary. Western believes that actual cost or 150 percent of market price is sufficient incentive for Customers to remain inside the bandwidth.

E. *Comment:* A direct connected generation Customer noticed that the proposed formula rates did not have any crediting or offsetting mechanism for reactive supply and voltage control. The Customer requested that to the extent that Western compensates its own generation for providing the above services, then other Western Customers with generation that provide the same service must also be compensated.

Response: Western understands the Customer's concerns. The provisional rates do not provide for a credit for reactive supply and voltage control from generation sources to any party, including Western.

F. *Comment:* One Customer that is connected to the CVP transmission system requested that Western develop

provisions that would allow CVP transmission Customers to self-provide regulation and operating reserves.

Response: Western had provisions in the proposed rates to allow crediting of self-provided ancillary services. Self-provision is included in the interconnected operations agreement and has been taken out of the provisional rates.

F. *Comment:* A Customer indicated that the current proposed rates are several times higher than rates presented in 2003 and provided a table (*see below*). The Customer indicated that Western had not provided any explanation why the rates rose so dramatically since May 2003 and whether or not this volatility was expected to continue.

ANCILLARY SERVICE PER UNIT COST COMPARISON

Service	May 2003 per unit cost	May 2004 per unit cost	Percent increase
Scheduling and System Control and Dispatch	$60.00/E-tag	By contract	N/A
Reactive Power and Voltage Control	$0.07/kWmonth	Assigned by transmission system.	N/A
Operating Reserve—Spinning	$0.31/kWmonth	$3.30/kWmonth	965
Operating Reserve—Supplemental Reserve Service (non-spin)	$0.19/kWmonth	$2.52/kWmonth	1226
Regulation and Frequency Response	$0.40/kWmonth	$6.33/kWmonth	1483

Response: Western's provisional rates for spinning and non-spinning reserve service are based on prices consistent with the CAISO markets. As such, the comparison above is no longer applicable. For regulation and frequency response service, as Western explained during the public information forum and accompanying slides, the increase in comparative rates for regulation and frequency response service was primarily due to increased O&M costs used in the cost-of-service study. In addition, Western used a Reclamation FY 2002 Ancillary Services Study to estimate hourly capacity amounts available from the CVP plants for regulation and frequency response service. These capacity amounts translated into purchase costs that were included in the estimated revenue requirements for the applicable services. In a letter to all interested parties on July 28, 2004, Western made a change to the revenue requirement for Component 1 of the formula rate for regulation and frequency response service. Western removed the purchase costs for regulation and frequency response service, and the appropriate revenue requirement was adjusted. This change in revenue requirement is documented in the table below. If purchase costs are incurred in providing of this service, these costs will be included in the next revision to the revenue requirement.

CHANGE IN REVENUE REQUIREMENT FOR REGULATION AND FREQUENCY RESPONSE SERVICE

Service	Revenue requirement with purchase costs	Revised revenue requirement without purchase costs
Regulation with Frequency Response Service	$2,277,692	$905,613

Since the publication of this letter, the revenue requirement was further revised to $972,405. The estimated revenue requirement increased slightly as a result of an increase in the regulating capacity needed for SCA members. Based on the revised revenue requirement, a revised cost-of-service study, and the provisional formula rate for regulation and frequency response service, the estimated rate is now $2.57 per kWmonth, which represents a 3 percent increase from Western's regulation and frequency response service existing rate.

General Comments

General comments and responses regarding operational considerations, power scheduling, and extension of the comment period, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

Operational Considerations

A. *Comment:* A Customer was particularly concerned that an ''operational decision [regarding control area participation] should not be made without consideration of the rate and cost impacts on the Customers. One of the criteria used by Western to make its operational decision was cost effectiveness.'' The Customer did not feel that the proposed rates demonstrated that the SCA is cost effective and Customers should not be forced to pay costs higher than the CAISO.

Response: Rates for CVP power and power-related services are designed to recover the costs associated with providing the service. Customers have the option to self-provide spinning and non-spinning reserves and regulation and frequency response service, which gives them some flexibility to determine their own costs. The operational decision regarding Western's choice for joining a control area was set in a separate public process and is outside the scope of this public process.

B. *Comment:* A number of Customers expressed an interest in Western initiating a process to find additional ways to enhance the Western SCA: to ameliorate the uncertainty and ambiguities associated with the termination of Contracts 2947A, 2948A, and related contracts; to assess and promote the ability to dynamically schedule with the Western SCA load not directly connected to the CVP transmission system; to investigate ways to develop a ''grid best'' structure with regard to Western and all its Customers; and to explore mechanisms to assure needed future capital expenditures for transmission and power supply are

provided in a timely manner. Another Customer asked that Western recognize that some Customers have existing agreements, like a metered subsystem, and should consider allowing these Customers to dynamically schedule their resources with the CAISO.

Response: These comments are outside the scope of this public process. The termination of Contracts 2947A, 2948A, and other related contracts is being addressed in the Commission technical conferences with the affected parties.

Power Scheduling

A. *Comment:* A number of Customers not directly connected to the CVP transmission system stated that they expected Western to minimize its costs by scheduling the CVP generation located in the CAISO's control area to Customers in the CAISO control area.

Response: Western seeks to minimize costs for all activities relating to delivering Western power to its Customers. To the extent practicable, CVP generation in the CAISO control area will be scheduled to project use, First Preference, and Base Resource Customers in the CAISO control area.

Extension of the Comment Period

A. *Comment:* Several Customers requested an extension of the comment period for this public process. These requests were made primarily because entities are interested in evaluating the ancillary service formula rates in association with the recently signed Sacramento Municipal Utility District (SMUD) and Western interconnection agreement and soon to be negotiated intra-SCA agreements between Western and SCA members.

Response: Western understands the concern expressed by these Customers. Western has committed to providing updated revenue requirement and/or rate information on or before December 1, 2004, for all rates except COTP and PACI transmission. The COTP and PACI transmission rate information will be provided on or before December 15, 2004, when the winter COI rating information should be available. Western cannot afford a delay in this rate process given that service must begin January 1, 2005.

Availability of Information

Information about this rate adjustment, including power repayment studies, comments, letters, memorandums, and other supporting material made and kept by Western and used to develop the provisional rates, is available for public review in the Sierra Nevada Regional Office, Western Area Power Administration, located at 114 Parkshore Drive, Folsom, California.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR 1500–1508); and DOE NEPA Regulations (10 CFR 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Submission to the Federal Energy Regulatory Commission

The interim rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to the Commission for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective January 1, 2005, Rate Schedules CV–F11, CPP–1, CV–T1, CV–TPT6, CV–NWT3, COTP–T1, PACI–T1, CV–RFS3, CV–EID3, CV–SPR3, and CV–SUR3 for the Central Valley and the California-Oregon Transmission Projects, and the Pacific Alternating Current Intertie of the Western Area Power Administration. The rate schedules shall remain in effect on an interim basis, pending the Commission's confirmation and approval of them or substitute rates on a final basis through September 30, 2009.

Dated: November 18, 2004.

Kyle E. McSlarrow,

Deputy Secretary.

Rate Schedule CV–F11 (Supersedes Schedule CV–F10)

Central Valley Project; Schedule of Rates for Base Resource and First Preference Power

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To the Base Resource (BR) and First Preference (FP) power Customers.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract. This service includes the Central Valley Project (CVP) transmission, spinning, and non-spinning reserve services.

Power Revenue Requirement: Western will develop the Power Revenue Requirement (PRR) prior to the start of each fiscal year (FY). The PRR will be divided into two 6-month periods, October through March and April through September. A monthly PRR will be calculated by dividing each 6-month PRR by six. The PRR for the April through September period will be reviewed in March of each year (except March 2005). The review will analyze financial data from the October through February period, to the extent information is available, as well as forecasted data for the March through September period. If there is a change of $5 million or more, the PRR for the April through September period will be recalculated. For the January through September 2005 period, a monthly PRR will be calculated by dividing the PRR for that period by nine.

First Preference Power Formula Rate:

Component 1:

$$\text{FP Customer Percentage} = \frac{\text{FP Customer Load}}{\text{Gen} + \text{Power Purchases} - \text{Project Use}}$$

FP Customer Charge = FP Customer Percentage × MRR

Where:

FP Customer Load = An FP Customer's forecasted annual load in megawatthours (MWh).

Gen = The forecasted annual CVP and Washoe generation (MWh).

Power Purchases = Power purchases for project use and FP loads (MWh).

Project Use = The forecasted annual project use loads (MWh).

MRR = Monthly Power Revenue Requirement.

Western will develop the FP Customer percentage prior to the start of each FY. During March of each FY (except March 2005), each FP Customer's percentage will be reviewed. If, as a result of the review, there is a change in the FP Customer's percentage of more than one-half of 1 percent, the percentage will be revised for the April through September period.

The percentages in the table below are the maximum percentages for each FP Customer that will be applied to the MRR. The maximum percentages were determined based on a critically dry year where there are hydrologic conditions that result in low CVP generation and, consequently, low levels of BR. These maximum percentages are not used in instances where individual FP Customer percentages increase due to load growth. If these maximum percentages are used for determining the FP Customer's charges for more than 1 year, then Western will evaluate their percentage from the formula rate versus the maximum percentage and make adjustments as appropriate.

FP CUSTOMERS' MAXIMUM PERCENTAGES

FP customers	Maximum FP customer's percentage applied to the MRR
Sierra Conservation Center ..	1.39
Calaveras Public Power Agency	3.49
Trinity Public Utility District ...	9.21
Tuolumne Public Power Agency	3.42
Total	17.51

Below is a sample calculation for an FP Customer monthly charge for power.

FP CUSTOMER MONTHLY CHARGE SAMPLE CALCULATION

Example: First preference customer charge calculation	
FP Customer Load—MWh ...	10,000
Washoe generation—MWh ..	2,500
CVP generation—MWh	3,700,000
Project Use Load—MWh	1,200,000
Project Use purchase—MWh	47,000
FP Customer percentage	0.39%
MRR	$3,333,333
FP Customer monthly charge	$13,000

Component 2

Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or schedule accepted or approved by the Federal Energy Regulatory Commission (Commission) or other regulatory body will be passed on to each appropriate Customer. The Commission or other regulatory body accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate Customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate Customer, the charges or credits will be passed through using Component 1 of the FP power formula rate.

Component 3

Any charges or credits from the Host Control Area (HCA) applied to Western for providing this service will be passed through directly to the appropriate Customer in the same manner Western is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the FP power formula rate.

BR Formula Rate

Component 1

BR Customer Charges = (BR RR × BR %)

Where:

BR RR = BR Monthly Revenue Requirement

BR % = BR percentage for each Customer as indicated in the BR contract after adjustments for hourly exchange energy.

BR Customers will pay for exchange energy by adjusting the BR percentage that is applied to the BR RR. Adjustments to a Customer's BR percentage for seasonal exchanges will be reflected in the Customer's BR contract.

An illustration of the adjustment to a Customer's BR percentage for hourly Exchange Energy (EE) is shown in the table below.

EXAMPLE OF BASE RESOURCE PERCENTAGE ADJUSTMENTS FOR EXCHANGE ENERGY

BR customer	BR percentage from contract	Hourly BR = 30 MWh	Customer's BR in excess of load	Customers receiving EE	BR delivered (adjusting for EE)	Revised BR percentage
Customer A	20	6	3	0	3	10
Customer B	10	3	0	1	4	13.33
Customer C	70	21	0	2	23	76.67
Total	100	30	3	3	30	100

After the FP Customers' share of the annual power revenue requirement has been determined, the remainder of the annual power revenue requirement is recovered from the BR Customers. The BR revenue requirement will be collected in two 6-month periods. For October through March, 25 percent of the BR revenue requirement will be

collected. For April through September, 75 percent of the BR revenue requirement will be collected.

A BR RR is calculated by dividing the BR 6-month revenue requirement by six. The revenues from the sale of surplus BR will be applied to the annual BR RR for the following FY.

For January through September 2005, the BR RR will be allocated 25 percent to the 3-month period from January through March 2005 and 75 percent to the 6-month period, April through September 2005.

Component 2

Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate Customer. The Commission or other regulatory body accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate Customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate Customer, the charges or credits will be passed through using Component 1 of the BR formula rate.

Component 3

Any charges or credits from the HCA applied to Western for providing this service will be passed through directly to the appropriate Customer in the same manner Western is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the BR formula rate.

Billing: Billing for BR and FP power will occur monthly using the respective formula rate.

Adjustment for Losses: Losses will be accounted for under this rate schedule as stated in the service agreement.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the revenue requirement under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CPP–1

Central Valley Project; Schedule of Rates for Custom Product Power

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To Customers that contract with the Western Area Power Administration (Western) for Custom Product Power.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Formula Rate: The Customer will pay all costs incurred in the provision of Custom Product Power. These costs will be passed through to the Customer. The methodology used to calculate the amount of the pass through will be based on the type of funding used to purchase the Custom Product Power. Custom Product Power includes, but is not limited to, supplemental power and Base Resource (BR) firming power.

Advance Funding: Costs for Custom Product Power funded in advance by the Customer(s) will be passed through to that Customer(s) based on the power forecasted for the Customer(s). Unless otherwise agreed to by Western, Custom Product Power funded in advance that is surplus to the load requirements of the Customer(s) will be sold. If the Customer(s) fail to have an account available to receive the proceeds from the sale of surplus Custom Product Power, the proceeds are forfeited to Western and will be applied to the Custom Product Power cost for the Customer(s), to the extent possible.

The table below illustrates the pass through of the Custom Product Power costs for three Customers and the treatment of proceeds from the sale of surplus Custom Product Power. As depicted in the table below, Customers A, B, and C have payment responsibility for a Custom Product Power purchase that was made for them as a group and forecasted for them individually. Customer C must pay for the 3 megawatthours (MWh) even though the Custom Product Power could not be used. The proceeds from the sale of the surplus 3 MWh are deposited into Customer C's account.

CPP COST RECOVERY WITH PROCEEDS FROM SALES OF SURPLUS CPP ADVANCED CUSTOMER FUNDING WITH ACCOUNT

[Western made a CPP purchase of 13 megawatts (MW) for the hour @ $10/MWh=$130]

	CPP forecasted (MWh)	Customer charged for CPP	CPP RR	Surplus CPP sales	Proceeds from excess CPP sales	Proceeds deposited into acct
Customer A	6	$60		0	$0	$0
Customer B	4	40		0	0	0
Customer C	3	30		3	12	12
Total	13	130	$130	3	12	12

Notes:
1. Western sold 3 MWh of CPP at $4/MWh=$12.
2. Proceeds are deposited into Customer C's escrow account because Customer C's CPP amount was surplus.

The table below illustrates the pass through of the Custom Product Power costs for three Customers and the treatment of proceeds from the sale of surplus Custom Product Power for the Customer(s) that have not established an account. As depicted in the table below, all Customers must pay for the Custom Product Power forecasted for them individually. Customer C must pay for the 3 MWh even though the Custom Product Power could not be used by Customer C. The proceeds from the sale of the surplus 3 MWh are used to reduce the Custom Product Power costs for the group to the extent possible, since Customer C does not have an account available for the proceeds. If the costs of the Custom Product Power are fully recovered and proceeds remain from the sale of surplus Custom Product Power, the remaining proceeds will be used to reduce the power revenue requirement.

CPP COST RECOVERY WITH PROCEEDS FROM SALES OF SURPLUS CPP ADVANCED CUSTOMER FUNDING WITHOUT ACCOUNT

[Western made a CPP purchase of 13 MW for the hour @ $10/MWh=$130]

	CPP forecasted (MWh)	CPP cost	Surplus CPP	Proceeds from excess CPP sales	Charge per customer
Customer A	6	$60	0		$54.46
Customer B	4	40	0		36.31
Customer C	3	30	3		$27.23
Total	13	130	3	$12	$118.00

Notes:
1. Western sold 3 MWh of surplus CPP at $4/MWh = $12.
2. Proceeds reduce the CPP cost because no account is available for the proceeds of the sale of surplus CPP.
3. Proceeds from surplus sales reduce CPP costs and are allocated to each Customer based on the amount of CPP forecasted.

Use of Receipts, Federal Reimbursable, or Appropriations Authority:

If the Custom Product Power is funded through appropriations, Federal reimbursable, or use of receipts authority, the cost of the Custom Product Power is passed through to the Customer(s) that have this power in their final schedule. Custom Product Power funded through appropriations, Federal reimbursable, or use of receipts authority that is surplus to the load requirements of the Customer(s) will be sold. Proceeds from the sale of surplus Custom Product Power funded through use of receipts, Federal reimbursable, or appropriations authority will be applied to the Custom Product Power purchase cost for the Customer(s) to the extent possible. If the cost of the Custom Product Power is fully recovered and proceeds remain from the sale of surplus Custom Product Power, the remaining proceeds will be used to reduce the power revenue requirement. The table below illustrates the pass through of the Custom Product Power costs to each Customer and the treatment of proceeds from the sale of surplus Custom Product Power funded through appropriations, Federal reimbursable, or use of receipts authority. As shown, Customers A and B are responsible for paying the full costs of the Custom Product Power purchase made by Western (Total Custom Product Power revenue requirement is $130) because they are the only Customers that had the Custom Product Power in their final schedules. The Custom Product Power revenue requirement of $130 is reduced by the sales of $12, which reduces the Custom Product Power revenue requirement to $118. Therefore, the reduced Custom Product Power revenue requirement of $118 is prorated to each Customer based on the amount of Custom Product Power in their final schedules.

CPP COST RECOVERY WITH PROCEEDS FROM SALES OF SURPLUS CPP USE OF RECEIPTS, FEDERAL REIMBURSABLE, OR APPROPRIATIONS AUTHORITY

[Western made a CPP purchase of 13 MW for the hour @ $10/MWh = $130]

	CPP purchased (MWh)	CPP used (MWh)	CPP costs	Surplus CPP sold	Proceeds from excess CPP sales	CPP customer charges
Customer A	6	6		0		$70.80
Customer B	4	4		0		47.20
Customer C	3	0		3		0.00
Total	13	10	$130	3	$12	118.00

Notes:
1. Western sold 3 MWh of CPP at $4/MWh = $12.
2. Proceeds from the sale of surplus CPP reduce the CPP Costs prorated based on the amount of CPP used.

Western will charge $31.07 per schedule per day to cover its administrative costs for procuring and scheduling Custom Product Power if the Customer has not contracted with Western for this type of service through other agreements. If the actual number of schedules for the month is not available, Western will estimate the number of schedules for the month and apply the $31.07 per schedule charge to the estimated number of schedules.

Billing: Billing for Custom Product Power will occur monthly using the formula rate.

Adjustments for Losses: All losses incurred for delivery of Custom Product Power under this rate schedule shall be the responsibility of the Customer that has contracted for this service.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the revenue requirement under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–T1 (Supersedes Schedules CV–FT4 and CV–NFT4)

Central Valley Project; Schedule of Rate for Transmission Service

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To Customers receiving Central Valley Project (CVP) firm and/or non-firm transmission service.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60 hertz, delivered

and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service needed to support the transmission service.

Formula Rate: The formula rate for CVP firm and non-firm transmission service includes three components:

Component 1

$$\frac{\text{CVP TRR}}{\text{TTc} + \text{NITSc}}$$

Where:

CVP TRR = Transmission Revenue Requirement is the costs associated with facilities that support the transfer capability of the CVP transmission system, excluding generation facilities and radial lines.

TTc = Total Transmission Capacity is the total transmission capacity under long-term contract between the Western Area Power Administration (Western) and other parties.

NITSc = Average 12-month coincident peaks of network integrated transmission service (NITS) Customers at the time of the monthly CVP transmission system peak. For rate design purposes, Western's use of the transmission system to meet its statutory obligations is treated as NITS.

Western will revise the rate from Component 1 based on either of the following two conditions: (a) Updated financial data available in March of each year, and (b) a change in the numerator or denominator that results in a rate change of at least $0.05 per kilowattmonth. Rate change notifications will be posted on the Open Access Same-Time Information System.

Component 2

Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (Commission) or other regulatory body will be passed on to each appropriate Customer. The Commission or other regulatory body accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the appropriate Customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the CVP transmission service formula rate.

Component 3

Any charges or credits from the Host Control Area (HCA) applied to Western for providing this service will be passed through directly to the appropriate Customer in the same manner Western is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the CVP transmission service formula rate.

Billing: The formula rate above applies to the maximum amount of capacity reserved for periods ranging from 1 hour to 1 month, payable whether used or not. Billing will occur monthly.

Adjustment for Losses: Losses incurred for service under this rate schedule will be accounted for as agreed to by the parties in accordance with the service agreement.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the revenue requirement under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–NWT3 (Supersedes Schedule CV–NWT2)

Central Valley Project; Schedule of Rate for Network Integration Transmission Service

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To Customers who receive Central Valley Project (CVP) Network Integration Transmission Service (NITS), to points of delivery and receipt as specified in the service agreement.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60 hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service needed to support the transmission service.

Formula Rate: The formula rate for CVP NITS includes three components:

Component 1

NITS Customer's monthly demand charge = NITS Customer's load ratio share times one-twelfth (1/12) of the Annual Network TRR.

Where:

NITS Customer's load ratio share = The NITS Customer's hourly load (including behind the meter generation minus the NITS Customer's hourly Base Resource) coincident with the monthly CVP transmission system peak minus the coincident peak for all firm CVP (including reserved transmission capacity) transmission service, expressed as a ratio.

Annual Network TRR = Total CVP transmission revenue requirement, less revenues from long-term contracts for CVP transmission between the Western Area Power Administration (Western) and other parties.

The Annual Network TRR will be revised when the rate from Component 1 of the CVP transmission rate under Rate Schedule CV–T1 is revised.

Component 2

Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate Customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate Customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the CVP NITS formula rate.

Component 3

Any charges or credits from the Host Control Area (HCA) applied to Western for providing this service will be passed through directly to the appropriate Customer in the same manner Western is charged or credited, to the extent

possible. If the HCA charges or credits cannot be passed through to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the CVP NITS formula rate.

Billing: NITS will be billed monthly under the formula rate.

Adjustment for Losses: Losses incurred for service under this rate schedule will be accounted for as agreed to by the parties in accordance with the service agreement.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the revenue requirement under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule COTP–T1 (Supersedes Schedules COTP–FT2 and COTP NFT–2)

California-Oregon Transmission Project; Schedule of Rate for Transmission Service

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To Customers receiving California-Oregon Transmission Project (COTP) firm and/or non-firm transmission service.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60 hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service needed to support the transmission service.

Formula Rate: The formula rate for COTP firm and non-firm transmission service includes three components:

Component 1

$$\frac{\text{COTP TRR}}{\text{Western's COTP Seasonal Capacity}}$$

Where:

COTP TRR = COTP Seasonal Transmission Revenue Requirement (the Western Area Power Administration's (Western) costs associated with facilities that support the transfer capability of the COTP).

Western's share of COTP Seasonal Capacity = Western's share of COTP capacity (subject to curtailment) under the then current California-Oregon Intertie (COI) transfer capability for the season. Seasonal definitions for summer, winter, and spring are June through October, November through March, and April through May, respectively.

Western will update the rate from Component 1 of the formula rate for COTP firm transmission service at least 15 days before the start of each COI rating season. Rate change notifications will be posted on the Open Access Same-Time Information System.

Component 2

Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (Commission) or other regulatory body will be passed on to each appropriate Customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate Customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the COTP transmission service formula rate.

Component 3

Any charges or credits from the Host Control Area (HCA) applied to Western for providing this service will be passed through directly to the appropriate Customer in the same manner Western is charged or credited, to the extent possible. If the HCA charges or credits cannot be passed through to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the COTP transmission service formula rate.

Billing: The formula rate above applies to the maximum amount of capacity reserved for periods ranging from 1 hour to 1 month, payable whether used or not. Billing will occur monthly.

Adjustment for Losses: Losses incurred for service under this rate schedule will be accounted for as agreed to by the parties in accordance with the service agreement.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the revenue requirement under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule PACI–T1

Pacific Alternating Current Intertie Project; Schedule of Rate for Transmission Service

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To Customers receiving the Pacific Alternating Current Intertie (PACI) firm and/or non-firm transmission service.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60 hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service needed to support the transmission service.

Formula Rate: The formula rate for PACI firm and non-firm transmission service includes three components:

Component 1

$$\frac{\text{PACI TRR}}{\text{Western's PACI Seasonal Capacity}}$$

Where:

PACI TRR = PACI Seasonal Transmission Revenue Requirement, the Western Area Power Administration's (Western) costs associated with facilities that support the transfer capability of the PACI.

Western's PACI Seasonal Capacity = Western's share of PACI capacity (subject to curtailment) under the then current California-Oregon Intertie (COI) transfer capability for the season. Seasonal definitions for summer, winter, and spring are June through October, November through March, and April through May, respectively.

Western will update the rate from Component 1 of the formula rate for PACI firm transmission service at least 15 days before the start of each COI rating season. Rate change notifications will be posted on the Open Access Same-Time Information System.

Component 2

Any charges or credits associated with the creation, termination, or

modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (Commission) or other regulatory body will be passed on to each appropriate Customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate Customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the PACI transmission service formula rate.

Component 3

Any charges or credits from the Host Control Area (HCA) applied to Western for providing this service will be passed through directly to the appropriate Customer in the same manner Western is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate Customer, the charges or credits will be passed through using Component 1 of the PACI transmission service formula rate.

Billing: The formula rate above applies to the maximum amount of capacity reserved for periods ranging from 1 hour to 1 month, payable whether used or not. Billing will occur monthly.

Adjustment for Losses: Losses incurred for service under this rate schedule will be accounted for as agreed to by the parties in accordance with the service agreement.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the revenue requirement under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–TPT6 (Supersedes CV–TPT5)

Central Valley Project; Schedule of Rate for Transmission of Western Power by Others

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To the Western Area Power Administration's (Western) power service Customers who require transmission service by a third party to receive power sold by Western.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60 hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points as agreed to by the parties.

Formula Rate

Component 1

When Western uses transmission facilities other than its own in supplying Western power, and costs are incurred by Western for the use of such facilities, the Customer will pay all costs, including transmission losses, incurred in the delivery of such power.

Component 2

Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (Commission) or other regulatory body will be passed on to each appropriate Customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate Customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the third-party transmission service formula rate.

Component 3

Any charges or credits from the Host Control Area (HCA) applied to Western for providing this service will be passed through directly to the appropriate Customer in the same manner Western is charged or credited, to the extent possible. If the HCA charges or credits cannot be passed through to the appropriate Customer, the charges or credits will be passed through using Component 1 of the third-party transmission service formula rate.

Billing: Third-party transmission will be billed monthly under the formula rate.

Adjustments for Losses: All losses incurred for delivery of power under this rate schedule shall be the responsibility of the Customer that received the power.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the revenue requirement under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–SPR3 (Supersedes Schedule CV–SPR2)

Central Valley Project; Schedule of Rate for Spinning Reserve Service

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To Customers receiving spinning reserve service.

Character and Conditions of Service: Spinning reserve service supplies capacity that is available immediately to take load and is synchronized with the power system.

Formula Rate: The provisional formula rate for spinning reserve service is the price consistent with the California Independent System Operator's market plus all costs incurred as a result of the sale of spinning reserves, such as: (1) The Western Area Power Administration's (Western) scheduling costs, (2) any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (Commission) or other regulatory body to which this rate methodology applies, and (3) any charges or credits from the Host Control Area applied to Western for providing this service.

For Customers that have a contractual obligation to provide spinning reserve service to Western and do not fulfill that obligation, the penalty for nonperformance will be the greater of actual costs or 150 percent of the market price.

Billing: The formula rate above will be applied to the amount of spinning reserve sold. Billing will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to formula rate in this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–SUR3 (Supersedes Schedule CV–SUR2)

Central Valley Project; Schedule of Rate for Non-Spinning Reserve Service

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To Customers receiving non-spinning reserve service.

Character and Conditions of Service: Non-spinning reserve service supplies capacity that is available within the first 10 minutes to take load and is synchronized with the power system.

Formula Rate: The provisional formula rate for non-spinning reserve service is the price consistent with the California Independent System Operator's market plus all costs incurred as a result of the sale of spinning reserves, such as: (1) The Western Area Power Administration's (Western) scheduling costs, (2) any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission or other regulatory body to which this rate methodology applies, and (3) any charges or credits from the Host Control Area applied to Western for providing this service.

For Customers with a contractual obligation to provide non-spinning reserve service to Western and who do not fulfill that obligation, the penalty for nonperformance will be the greater of actual costs or 150 percent of the market price.

Billing: The formula rate above will be applied to the amount of non-spinning reserve sold. Billing will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–RFS3 (Supersedes Schedule CV–RFS2)

Central Valley Project; Schedule of Rate for Regulation and Frequency Response Service

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To Customers receiving Regulation and Frequency Response Service (Regulation).

Character and Conditions of Service: Regulation is necessary to provide for the continuous balancing of resources and interchange with load and for maintaining scheduled interconnection frequency at 60 cycles per second.

Formula Rate: The provisional formula rate for Regulation includes three components:

Component 1

$$\frac{\text{Annual Revenue Requirement}}{\text{Annual Regulating Capacity kW}}$$

The annual regulating capacity is the total regulating capacity bandwidths provided by the Western Area Power Administration (Western) under the interconnected operations agreements with sub-control area (SCA) members. The penalty for nonperformance by an SCA Customer that has committed to self-provision for its regulating capacity requirement will be the greater of actual costs or 150 percent of the market price.

Western will revise the rate resulting from Component 1 based on either of the following two conditions: (a) updated financial data available in March of each year, and (b) a change in the numerator or denominator that results in a rate change of at least $0.25 per kilowattmonth.

Component 2

Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (Commission) or other regulatory body will be passed on to each appropriate Customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate Customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the regulation and frequency response service formula rate.

Component 3

Any charges or credits from the Host Control Area (HCA) applied to Western for providing this service will be passed through directly to the appropriate Customer in the same manner Western is charged or credited, to the extent possible. If the HCA charges or credits cannot be passed through to the appropriate Customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the Regulation formula rate.

Billing: The formula rate above will be applied to the regulating capacity bandwidth contained in the service agreement. Billing will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the revenue requirement under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–EID3 (Supersedes Schedule CV–EID2)

Central Valley Project Schedule of Rate for Energy Imbalance Service

Effective: January 1, 2005, through September 30, 2009.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To Customers receiving energy imbalance service.

Character and Conditions of Service: Energy imbalance service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load or from a generation resource over an hour. The hourly deviation, in megawatts, is the net scheduled amount of energy for the hour minus the hourly net metered (actual delivered) amount.

Energy imbalance service uses the regulating capacity bandwidth that is established in the service agreement.

Formula Rate: The formula rate for Energy Imbalance Service has three components:

Component 1

An hourly average negative deviation (underdelivery) outside the regulating capacity bandwidth will be charged the greater of 150 percent of market price or actual cost. An hourly average positive deviation (overdelivery) outside the bandwidth is lost to the system.

Component 2

Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (Commission) or other regulatory body will be passed on to each appropriate Customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

To the extent possible, the Western Area Power Administration (Western) will pass through directly to the appropriate Customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited.

Component 3

Any charges or credits from the Host Control Area applied to Western for providing this service will be passed through directly to the appropriate Customer in the same manner Western is charged or credited, to the extent possible.

Billing: Billing for average hourly negative deviations outside the bandwidth will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

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To authorize an exchange of land at Fort Frederica National Monument, and for other purposes. (Nov. 30, 2004; 118 Stat. 2339)

H.R. 1284/P.L. 108–418

To amend the Reclamation Projects Authorization and Adjustment Act of 1992 to increase the Federal share of the costs of the San Gabriel Basin demonstration project. (Nov. 30, 2004; 118 Stat. 2340)

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63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–052–00166–0)	61.00	July 1, 2004
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–050–00169–1)	60.00	Oct. 1, 2003
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–050–00171–3)	64.00	Oct. 1, 2003
43 Parts:			
1–999	(869–050–00172–1)	55.00	Oct. 1, 2003
1000–end	(869–050–00173–0)	62.00	Oct. 1, 2003
44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–050–00177–2)	50.00	Oct. 1, 2003
1200–End	(869–050–00178–1)	60.00	Oct. 1, 2003
46 Parts:			
1–40	(869–050–00179–9)	46.00	Oct. 1, 2003
41–69	(869–050–00180–2)	39.00	Oct. 1, 2003
70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
90–139	(869–050–00182–9)	44.00	Oct. 1, 2003
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–050–00184–5)	34.00	Oct. 1, 2003
166–199	(869–050–00185–3)	46.00	Oct. 1, 2003
200–499	(869–050–00186–1)	39.00	Oct. 1, 2003
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
47 Parts:			
0–19	(869–050–00188–8)	61.00	Oct. 1, 2003
20–39	(869–050–00189–6)	45.00	Oct. 1, 2003
40–69	(869–050–00190–0)	39.00	Oct. 1, 2003
70–79	(869–050–00191–8)	61.00	Oct. 1, 2003
80–End	(869–050–00192–6)	61.00	Oct. 1, 2003
48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
1 (Parts 52–99)	(869–050–00194–2)	50.00	Oct. 1, 2003
2 (Parts 201–299)	(869–050–00195–1)	55.00	Oct. 1, 2003
3–6	(869–050–00196–9)	33.00	Oct. 1, 2003
7–14	(869–050–00197–7)	61.00	Oct. 1, 2003
15–28	(869–050–00198–5)	57.00	Oct. 1, 2003
29–End	(869–050–00199–3)	38.00	[9]Oct. 1, 2003
49 Parts:			
1–99	(869–050–00200–1)	60.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
100–185	(869–050–00201–9)	63.00	Oct. 1, 2003
186–199	(869–050–00202–7)	20.00	Oct. 1, 2003
200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
400–599	(869–050–00204–3)	63.00	Oct. 1, 2003
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
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1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
1–16	(869–050–00208–6)	11.00	Oct. 1, 2003
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17.99(i)–end	(869–050–00211–6)	50.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
200–599	(869–050–00213–2)	44.00	Oct. 1, 2003
600–End	(869–050–00214–1)	61.00	Oct. 1, 2003
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2004 CFR set		1,342.00	2004
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2004
Individual copies		2.00	2004
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Complete set (one-time mailing)		298.00	2002

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.